

Non-Co-optimised Essential System Services Contract – North Country

Contract Number [TBC]

BETWEEN:

Electricity Networks Corporation
ABN 18 540 492 861

~ and ~

[Service Provider]
ABN [TBC]

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INTRODUCTION

Recitals

- A** Western Power, under the direction of the Coordinator of Energy, has undertaken a Non-Co-optimised Essential System Services (NCESS) procurement process for Reliability and System Strength Services in relation to the Electricity Industry (Network Quality and Reliability of Supply) Code 2005 (WA), for the **North Country region, to commence from 1 October 2028.**
- B** Western Power has requested that the Service Provider provide the Service from the Facility.
- C** Western Power and the Service Provider have agreed that the Service Provider will provide the Service from the Facility on the terms of this Contract.

OPERATIVE PROVISIONS

1 Contract Term

1.1 Term

- (a) Subject to clause 1.1(b), this Contract starts on the Execution Date and ends on the End Date (unless terminated earlier in accordance with its terms) (**Contract Term**).
- (b) If the Contract Details provide for an Extension Period then, by Notice to the Service Provider not less than two months before the then current End Date, Western Power may elect to extend the Contract Term by the Extension Period. If such an election is made by Western Power, the End Date (for the purpose of determining both the Contract Term and Service Term) will be the last day of the Extension Period.

2 Conditions Precedent

2.1 Condition Precedent

This Contract (other than this clause 2, clause 6 (Western Power Property) clause 10 (Liability of Western Power), clause 11 (Liability of Service Provider), clause 12 (Confidential Information), clause 14 (Security), clause 18 (Information Security), clause 19 (Warranties and representations), clause 20 (Force Majeure), clause 25 (Disputes), clause 26 (Independent Expert Dispute Resolution), 27 (Notices), clause 28 (General) and clause 29 (Interpretation)) has no legal effect unless and until all Conditions Precedent are satisfied or waived in accordance with clause 2.3.

2.2 Responsibility for satisfying Conditions Precedent

The Party specified in Schedule 2 as being responsible for satisfying a Condition Precedent must:

- (a) use reasonable endeavours to satisfy the Condition Precedent (that it is responsible for satisfying) as soon as practicable and, in any event, must satisfy each such Condition Precedent by the Condition Precedent Satisfaction Date (unless extended by Western Power under clause 2.4);

- (b) keep the other Party informed regarding the status of each Condition Precedent, including by providing information in accordance with Schedule 3 and as otherwise reasonably requested by Western Power; and
- (c) notify the other Party in writing promptly if the Party responsible for satisfying the Condition Precedent reasonably considers that a Condition Precedent is unlikely to be satisfied by the Condition Precedent Satisfaction Date (unless extended by Western Power under clause 2.4).

2.3 **Determination of satisfaction of Conditions Precedent**

- (a) Western Power must determine satisfaction (or otherwise) of each Condition Precedent within 3 Business Days of the date Western Power considers (at Western Power's sole discretion) that all information relevant to that Condition Precedent has been provided or becomes available to Western Power.
- (b) To avoid doubt, Western Power may request further information from the Service Provider at any time for the purposes of clause 2.3(a).
- (c) If Western Power determines under clause 2.3(a) that the Condition Precedent is satisfied, Western Power must set the date of satisfaction as the date when the Condition Precedent was satisfied, as reasonably determined by Western Power and promptly notify the Service Provider of such date in writing.

2.4 **Extension and waiver**

Each Condition Precedent (regardless of who has the responsibility for it) is for Western Power's benefit. Western Power (in its sole discretion) may extend a Condition Precedent Satisfaction Date to a date on or before the Final Condition Precedent Satisfaction Date, or waive the non-satisfaction of a Condition Precedent, by notifying the Service Provider to that effect in writing.

2.5 **Termination for non-satisfaction of Condition Precedent**

- (a) Western Power may terminate this Contract if a Condition Precedent is not satisfied by the Condition Precedent Satisfaction Date, and Western Power (in its sole discretion) does not:
 - (i) extend the Condition Precedent Satisfaction Date under clause 2.4; or
 - (ii) waive the non-satisfaction of the Condition Precedent under clause 2.4.
- (b) Upon termination under clause 2.5(a), this Contract has no further effect, each Party is released from its obligations under this Contract and neither Party will have any liability to the other Party, except in respect of a breach of clauses 12 and 13.

2.6 **Reduction of Service Quantity**

- (a) Western Power (as an alternative to termination under clause 2.5) may, in its sole and absolute discretion, by Notice to the Service Provider, reduce the relevant Service Quantity to a quantity Western Power reasonably expects the Service Provider to be capable of providing, having regard to all relevant information available to Western Power, including information provided by the Service Provider in accordance with Schedule 3.
- (b) If the Service Quantity is reduced under clause 2.6(a):

- (i) the Service Provider may, by Notice in writing, request Western Power to increase the relevant Service Quantity to a quantity up to but not exceeding the Service Quantity specified in the Contract Details; and
- (ii) Western Power may, in its sole and absolute discretion, increase the relevant Service Quantity to a quantity (up to but not exceeding the Service Quantity specified in the Contract Details) that Western Power expects the Service Provider to be capable of providing, having regard to all relevant information available to Western Power.

3 Provision of the Service

3.1 Provision of the Service

- (a) For the duration of the Service Term, the Service Provider must provide the Services as contemplated by and in accordance with the provisions of this Contract.
- (b) Without limiting clause 3.1(a), in providing the Service, the Service Provider must:
 - (i) comply with, satisfy, adhere to, achieve or meet (as the case may be):
 - (A) the Required Availability Percentage;
 - (B) the Services Schedule;
 - (C) all applicable Laws; and
 - (D) the terms of any Operating Protocol, as may be agreed from time to time by the Parties;
 - (ii) comply with Good Electricity Industry Practice in providing the Service and performing its obligations under this Contract;
 - (iii) provide all labour, tools, equipment, plant and materials as the Service Provider considers is reasonably required to provide the Service consistent with Good Electricity Industry Practice;
 - (iv) ensure that its Personnel have the experience, competency and expertise to provide the Service;
 - (v) ensure that all technical information provided by the Service Provider to Western Power is consistent with the technical information provided to AEMO by the Service Provider as Standing Data; and
 - (vi) at its own cost enter into such other agreements with Third Parties (if any) as the Service Provider may consider is required in order to provide the Service.
- (c) The Service Provider may subcontract the performance of certain works and activities in respect of the Facility in accordance with its usual practices. If the Service Provider engages Subcontractors to assist with the provision of the Services:
 - (i) the Service Provider must ensure they are reputable and competent subcontractors with all necessary expertise and resources to discharge the obligations subcontracted to them. No such subcontracting relieves the Service Provider from any of its obligations under this Contract.

- (ii) approval to subcontract, including subcontracts that exist as at the Execution Date of this Contract, does not relieve the Service Provider from any obligation under this Contract.
- (d) The Service Provider is liable to Western Power for the acts and omissions of the Service Provider's Personnel as if they were acts or omissions of the Service Provider.
- (e) Except for any information, equipment or assistance that is expressly required by a provision of this Contract to be provided by Western Power to the Service Provider, the Service Provider is solely responsible for obtaining all Approvals and providing all resources (whether equipment, goods, Personnel, Intellectual Property or otherwise) that are required to enable the Service Provider to provide the Services and discharge its obligations under this Contract.

3.2 **Facility**

- (a) The Service Provider must:
 - (i) ensure that the Equipment and Facility:
 - (A) is capable of providing the Services as contemplated by and in accordance with the terms of this Contract;
 - (B) is maintained in accordance with Good Electricity Industry Practice and the Scheduled Maintenance Plan;
 - (C) complies with:
 - (1) the Services Schedule;
 - (2) all Laws, including the Technical Rules and WEM Rules (including but not limited to the Technical Rules that mandate reliable SCADA and telecommunication system to enable remote monitoring, communication, and emergency control (including clause 3.3.4 of the Technical Rules), and Chapter 3A and Appendix 12 of the WEM Rules);
 - (3) Network Quality and Reliability of Supply Code; and
 - (4) Generator and Load Model Guidelines;
 - (ii) notify and coordinate outages with Western Power as soon as the Service Provider becomes aware of any requirement for planned or unplanned maintenance that affects, or could reasonably be expected to affect, the ability of the Equipment comprising the Facility to provide the Service Quantity;
 - (iii) plan maintenance in accordance with clause 3.18 of the WEM Rules;
 - (iv) ensure that a technician/expert will be on-site at the Service Location within 12 hours of a call-out; and
 - (v) supply Western Power with its asset management strategy.
- (b) Without limiting clause 3.2(a), the Service Provider must ensure that the Equipment comprising the Facility is serviced and maintained in accordance with the instructions and recommendations of the manufacturer of that Equipment.

- (c) The Service Provider must notify Western Power at least 30 days prior to making any material modification to the Equipment comprising the Facility. Such Notice must outline:
 - (i) the Equipment to be modified;
 - (ii) how it will be modified;
 - (iii) the date by which modifications are expected to be completed; and
 - (iv) whether that modification will in any way impact the manner in which the Services will be provided.
- (d) If a modification must be made urgently as a result of Unscheduled Maintenance or to preserve the safety or operational integrity of the Facility or the safety and integrity of the Network, and it is not possible to provide 30 days' Notice as contemplated by clause 3.2(c), then the Service Provider must provide the maximum notice period that is practicable in the circumstances.
- (e) Once a modification has been made, the Service Provider must provide a Notice to Western Power confirming that the modification complies with the Notice served under clause 3.2(c) or, if the actual modification differs in any way from that previously notified to Western Power, setting out a comprehensive and detailed explanation of those differences.
- (f) The Service Provider must, within a reasonable period of time following a request from Western Power to do so, provide Western Power with any additional information that Western Power may request in respect of a proposed modification or actual modification to the Equipment.
- (g) The Service Provider must not make any modification to the Equipment which may adversely affect the ability of the Facility to provide the Services in accordance with this Contract, or the safety and integrity of the Network.
- (h) For the avoidance of doubt, this clause 3.2 applies without prejudice to (and is not to be construed as contemplating any derogation from) the Parties' respective obligations to comply with the Law, including with respect to obligations provided in Chapter 3A of the WEM Rules.

3.3 **Compliance with Legislative Requirements**

- (a) Without limiting any other provision of this Contract, the Service Provider must:
 - (i) comply at its own cost and expense with all Legislative Requirements so far as they may affect or apply to the Service Provider in the performance of the Services;
 - (ii) give all notices, make all applications and pay all fees and expenses, including, increased or new fees and expenses, necessary to ensure compliance with all Legislative Requirements; and
 - (iii) without limiting clauses 3.3(a)(i) and 3.3(a)(ii), obtain and maintain any Approvals required for the construction and operation of the Facility and the Equipment.
- (b) The Service Provider must provide Western Power with such information in its possession as reasonably requested by Western Power in order for Western Power to satisfy and comply with the Legislative Requirements applying to Western Power and relating to the Service.

3.4 **No-exclusivity**

- (a) The Service Provider acknowledges and agrees that Western Power may engage any number of other persons to provide services that are the same or materially equivalent to the Service to Western Power. However, this does not change the Parties' obligations under this Contract, including the Service Provider's obligation to provide the Service and Western Power's obligation to pay the Service Provider.
- (b) The Parties acknowledge and agree that when the Services are not required to be Available under this Contract, the Service Provider may (in accordance with the WEM Rules and any applicable Law) participate in other trading mechanisms, including in the WEM for energy, Essential System Services and Reserve Capacity.

3.5 **Information**

The Service Provider must, within a reasonable period of time following a request from Western Power to do so, provide Western Power with whatever information Western Power might reasonably require from the Service Provider from time to time in relation to the Facility, the Services or the discharge of the Service Provider's obligations under this Contract.

3.6 **Metering**

The Service Provider agrees that, for the purposes of the *Electricity Industry (Metering) Code 2012* and all other Laws, Western Power may, for the Service Term and for such time thereafter as required for the purposes set out below, use metering data relating to the Facility:

- (a) to determine if Western Power will request provision of the Services;
- (b) to determine if the Services are being, or have been, provided in accordance with this Contract; and
- (c) to otherwise exercise Western Power's rights under this Contract,

subject to any applicable confidentiality provisions of the *Electricity Industry (Metering) Code 2012*.

3.7 **Key Performance Indicators**

- (a) The provisions of this clause 3.7 (including the requirements in respect of the Key Performance Indicators) are additional and without prejudice to the Service Provider's obligations and Western Power's rights otherwise under this Contract.
- (b) The Service Provider must meet the Key Performance Indicators listed in Schedule 8 at all times during the Service Term.
- (c) The Key Performance Indicators may be amended from time to time by agreement between the Parties in writing.
- (d) Within 8 Business Days of the end of each Reporting Period during the Service Term, or as requested by Western Power from time to time (acting reasonably), the Service Provider must provide Western Power with a report in a format acceptable to Western Power:
 - (i) detailing the Service Provider's performance under the Contract against each of the Key Performance Indicators during the Reporting Period

(including the score achieved by the Service Provider for each of the Key Performance Indicators);

- (ii) containing any other information reasonably required by Western Power in respect of the Service Provider's performance against the Key Performance Indicators including full and complete records of the calculations of the Service Provider's performance against the Key Performance Indicators; and
 - (iii) where the performance for any Key Performance Indicator is below the Minimum Performance Level, containing a remedial report that includes a pareto analysis and a proposed remedy plan identifying the causes relating to the failure to reach the Minimum Performance Level and the methods which the Service Provider intends to utilise to remedy that failure (**Remedy Plan**).
- (e) All information provided under clause 3.7(d) by the Service Provider may be audited or inspected by Western Power.
- (f) Within 10 Business Days of receipt of a Remedy Plan, or such other time as agreed between the Parties, Western Power must advise the Service Provider in writing whether, in its discretion (acting reasonably), it approves the Remedy Plan or whether it requires any amendments to the Remedy Plan. The Service Provider is not required to accept the amendments to the Remedy Plan proposed by Western Power. If the Service Provider does not accept Western Power's proposed amendments, Western Power may reject the Remedy Plan.
- (g) If Western Power approves a Remedy Plan, the Service Provider must implement the Remedy Plan.
- (h) If:
- (i) Western Power does not approve a Remedy Plan;
 - (ii) the Service Provider fails to provide or implement an approved Remedy Plan;
 - (iii) the performance to be improved by the implementation of the approved Remedy Plan does not improve so as to meet or exceed the Minimum Performance Level by the next Reporting Period or as otherwise stipulated in the Remedy Plan; or
 - (iv) a pattern of not meeting Minimum Performance Levels of a Key Performance Indicator occurs for two or more consecutive occasions in terms of the same Key Performance Indicator,

that is a Critical Default for the purposes of clause 22 of this Contract.

3.8 **Good faith**

The Parties will act in good faith in relation to all dealings under or in connection with this Contract.

4 Availability

4.1 **Overall Availability**

Without limiting the Service Provider's other obligations under this Contract, the Service Provider must ensure that for each Service Year during the Service Term the Availability Level meets or surpasses the Required Availability Percentage.

4.2 **Scheduled Maintenance**

- (a) Subject to clause 4.1 and the remaining requirements of this clause 4.2, the Service Provider may undertake Scheduled Maintenance of the Facility in accordance with a Scheduled Maintenance Plan.
- (b) Three months prior to each anniversary of the Start Date that occurs during the Service Term, the Service Provider must provide Western Power with the Service Provider's proposed Scheduled Maintenance Plan for the forthcoming Service Year (or such other period as agreed by the Parties in writing).
- (c) Western Power will review the Scheduled Maintenance Plan and may, within one month of receipt of the Scheduled Maintenance Plan:
 - (i) require such changes to it as Western Power deems necessary to ensure that the Service is not Unavailable due to Scheduled Maintenance during a period which will, or is likely to, have a material adverse impact upon the safety and integrity of the Network; and
 - (ii) otherwise request changes to the Scheduled Maintenance Plan.
- (d) The Service Provider:
 - (i) must make changes to a Scheduled Maintenance Plan as required by Western Power under clause 4.2(c)(i) unless making such changes would cause the Service Provider to breach an applicable Law or a binding requirement that the Service Provider has received notice of from AEMO; and
 - (ii) must not unreasonably withhold its consent to a change requested by Western Power under clause 4.2(c)(ii).
- (e) Within one month of receipt of a Notice from Western Power under clause 4.2(c), the Service Provider must provide Western Power with the final form of its Scheduled Maintenance Plan for the relevant Service Year (or other period agreed by the Parties in writing). To the extent the Service Provider has not made a change referred to in clause 4.2(d), the Scheduled Maintenance Plan must be accompanied by a reasonably detailed Notice explaining why the change has not been made.
- (f) Once provided to Western Power under clause 4.2(e), the Scheduled Maintenance Plan for a Service Year (or such other period agreed by the Parties in writing) may only be amended by the Service Provider:
 - (i) if required by AEMO in writing; or
 - (ii) with the written consent of Western Power (which consent is not to be unreasonably withheld but, to avoid doubt, may be withheld if such an amendment will, or is likely to, have a material adverse impact upon the safety and integrity of the Network).
- (g) The Service Provider must notify Western Power as soon as possible, and in any event within 2 Business Days, if it is required to amend the Scheduled Maintenance Plan due to a requirement of AEMO under clause 4.2(f)(i). Such Notice must contain full details of the requirement. Upon revising the Scheduled

Maintenance Plan in accordance with that requirement, the Service Provider must provide a copy of it to Western Power.

- (h) The Service Provider must notify Western Power:
 - (i) of the commencement date and time, as well as expected duration, of any Scheduled Maintenance which will result in the Service being Unavailable, which notification must be made no later than one month prior to the commencement of such Scheduled Maintenance; and
 - (ii) as soon as possible, after the completion of that Scheduled Maintenance.

4.3 **Notification of unavailability**

- (a) The Service Provider must notify Western Power if the Service:
 - (i) becomes, or may be, Unavailable (including at any time within the following 2 Business Days);
 - (ii) is likely to become Unavailable for a period commencing at a time after the following 2 Business Days; or
 - (iii) was Unavailable in respect of a period not already the subject of a Notice under clause 4.2(h)(ii).
- (b) Notice under clause 4.3(a)(i) must be:
 - (i) given by telephone as soon as possible, which Notice must include the Service Provider's then best estimate of the duration of the Unavailability; and
 - (ii) confirmed by email as soon as possible, which Notice must include the Service Provider's then best estimate of the duration of the Unavailability and the cause of the Unavailability; and
 - (iii) within five Business Days, confirmed by formal Notice in writing which formal Notice must set out:
 - (A) the duration of the Unavailability (and if the Unavailability is still continuing the Service Provider's best estimate of when the Unavailability will cease);
 - (B) the cause of the Unavailability; and
 - (C) the measures being taken, or to be taken, by the Service Provider to avoid or mitigate any future occurrence of the Unavailability due to that cause.
- (c) If Unavailability has not ceased as at the time that a Notice has been served under clause 4.3(a)(iii), the Service Provider must provide an updated version of such Notice every 5 Business Days and must provide a final version of that Notice upon the cessation of the Unavailability.
- (d) A notice issued by the Service Provider under clause 4.3(a)(iii) must be copied to AEMO.

4.4 **Deemed Unavailability**

- (a) If Western Power requests provision of the Services for a period (for which the Service Provider has not, in accordance with clause 4.3, already notified Western Power that the Service is, or will be, Unavailable) and the Facility fails to provide the Services in accordance with this Contract during that period, then the Service will be deemed to be Unavailable:
 - (i) commencing upon the latest of the following:
 - (A) the date from which the Service Provider last demonstrated to Western Power's reasonable satisfaction that the Service was Available;
 - (B) the last time a Test demonstrated that the Service was Available;
 - (C) the last time the Facility provided the Services in accordance with this Contract; or
 - (D) the Start Date; and
 - (ii) ending upon the first to occur of either a Test demonstrating the Service is Available or the Service Provider otherwise substantiating to Western Power's reasonable satisfaction that the Service is Available.

4.5 **Remedying Unavailability**

- (a) If the Service is Unavailable, or deemed to be Unavailable, then Western Power may, by Notice to the Service Provider, require that the Service Provider provide, and comply with, a remedial plan for rectifying the Unavailability.
- (b) The Service Provider must, within 5 Business Days of receiving a Notice under clause 4.5(a), provide Western Power with a remedial plan to rectify the relevant Unavailability.
- (c) As soon as reasonably possible after receipt by Western Power of a written request from the Service Provider for an extension of the 5 Business Day period under clause 4.5(b), Western Power will, acting reasonably, determine whether to grant such an extension and notify the Service Provider of its determination.
- (d) If, after receipt of a remedial plan pursuant to clause 4.5(b) or 4.5(c), Western Power considers the remedial plan to be an unsatisfactory means for rectifying Unavailability, Western Power may notify the Service Provider of this fact and the Service Provider must, as soon as possible, rectify the remedial plan to Western Power's satisfaction and provide Western Power with a duly rectified version of the remedial plan.
- (e) The Service Provider must, in accordance with Good Electricity Industry Practice, rectify the cause of any Unavailability as soon as possible (including in accordance with any remedial plan prepared under this clause 4.5) and must:
 - (i) keep Western Power informed as to its progress in rectifying the Unavailability (including providing such information as Western Power may reasonably request from time to time); and
 - (ii) provide such evidence as Western Power reasonably requires (which may include the conduct of Tests or permitting Western Power to conduct an inspection) to demonstrate that the Unavailability has been rectified.

4.6 **Failure to take remedial action**

If the Service Provider does not comply with clause 4.5 then Western Power may issue a Breach Notice to the Service Provider in accordance with clause 22.1.

4.7 **NCESS Operating Protocol**

- (a) This clause 4.7 only applies to the extent that there is an operating protocol between Western Power and AEMO in connection with the Service or such a protocol is being considered by Western Power or AEMO (**NCESS Operating Protocol**).
- (b) Western Power must:
 - (i) promptly provide a draft of any NCESS Operating Protocol to the Service Provider for review prior to Western Power proceeding to negotiate or agreeing to such draft with AEMO, and giving the Service Provider a reasonable time to review and provide comments on such draft; and
 - (ii) give the Service Provider reasonable prior Notice of any proposed changes to the NCESS Operating Protocol.
- (c) Western Power may agree (at its sole discretion) any requirements in, or amendments to, any NCESS Operating Protocol without the consent of the Service Provider provided that Western Power is satisfied, acting reasonably, that such amendments:
 - (i) are consistent with the terms of this Contract; or
 - (ii) do not impact the Service Provider.

5 Market Registration

5.1 **Registration**

Without derogating from the Service Provider's obligations under clause 3.1(e), the Service Provider must ensure that the Service Provider, and the Facility, have such registrations as are required under the WEM Rules to entitle the Service Provider to provide the Services.

5.2 **Standing Data**

- (a) The Service Provider must ensure the Standing Data for the Facility is consistent with the WEM Rules.
- (b) The Service Provider must not change the Standing Data minimum response time for the Facility without the prior written consent of Western Power.

6 Western Power's Property

6.1 **Western Power's rights**

- (a) The Service Provider must allow Western Power to access the Facility (either with or without workmen, consultants, employees, advisers and appropriate invitees, either with or without any equipment and materials) to:
 - (i) inspect, repair, maintain, replace, operate and control Western Power Property at the Facility; and
 - (ii) witness any Test as contemplated under this Contract.

- (b) The right of access under clause 6.1(a) may be exercised by Western Power's officers, employees, agents and contractors and using such equipment, materials and vehicles as is reasonable given the reason for which access is required.
- (c) In exercising its right of access under clause 6.1(a), Western Power will comply with any reasonable occupational health and safety and security procedures.
- (d) Western Power Property will remain the property of Western Power at all times. Western Power is entitled to remove Western Power Property from a Facility both during the Contract Term and after the End Date, for any reason.
- (e) The Service Provider must allow Western Power and its employees, contractors and agents access to Western Power Property at the Facility both before, during and after the Contract Term as reasonably required by Western Power.
- (f) Western Power will give reasonable prior Notice to the Service Provider before entering a Facility in accordance with this clause 6.1. In cases of emergency, or where it is entitled to do so under any Laws, Western Power may enter a Facility without prior Notice.
- (g) Nothing in this clause 6.1 overrides, restricts or fetters Western Power's statutory rights of access under the *Energy Operators (Powers) Act 1979 (WA)* or the exercise of those statutory rights with respect to the subject matter of this Contract.

6.2 **Protection of Western Power Property**

- (a) The Service Provider must ensure any Western Power Property is kept safe and secure, free from loss or damage and in a clean, waterproof area.
- (b) The Service Provider must not tamper or interfere with Western Power Property, or in any way circumvent or frustrate the operation of Western Power Property or the exercise of any other right that Western Power has at law or in equity in relation to Western Power Property.
- (c) The Service Provider must notify Western Power by telephone as soon as possible, and in any event not more than 30 minutes, after becoming aware of any:
 - (i) threatened or actual damage to, or tampering or interference with; or
 - (ii) defect in, or operational failure of,

Western Power Property, which Notice must be confirmed by the Service Provider via an email to Western Power on the same day that the requisite telephone call is made.

7 **Testing**

7.1 **Inspections**

- (a) On 5 Business Days' notice to the Service Provider, or immediately upon giving the Service Provider Notice where Western Power believes that the Facility may present a threat to the safety or integrity of the Network, Western Power may inspect the Facility:
 - (i) during any inspection periods specified in the Scheduled Maintenance Plan; or

- (ii) if Western Power has reason to believe the Facility may not comply with the requirements of this Contract.
- (b) The Service Provider must provide all co-operation and assistance reasonably required to enable Western Power to undertake an inspection in accordance with clause 7.1(a).
- (c) In undertaking an inspection, Western Power will comply with any reasonable occupational health and safety and security procedures applicable to the site on which the Facility is located.

7.2 Obligation to conduct Tests

- (a) The purpose of the Tests is to confirm that the Facility complies with the requirements of this Contract, including that the Facility is able to provide the Services as required by this Contract without adversely impacting the safety and integrity of the Network.
- (b) The Service Provider must undertake the Tests at the times set out in, and in accordance with the requirements of, the Scheduled Maintenance Plan.
- (c) The Service Provider may, at its discretion, undertake additional Tests to those set out in the Scheduled Maintenance Plan provided that such Tests are undertaken in accordance with the requirements of the Scheduled Maintenance Plan and the WEM Rules and do not result in the Availability Level being below the Required Availability Percentage.
- (d) If the Service Provider is directed by AEMO to undertake a Test, or is otherwise required by Law to undertake a Test, the Service Provider may do so provided that, to the extent that it is practicable to do so, such Tests are undertaken in accordance with this clause 7.
- (e) Without limiting clause 7.2(b), to the extent that the WEM Rules apply to the conduct of any Tests, the Service Provider must ensure that the Tests are undertaken in accordance with the requirements of the WEM Rules (including, but not limited to, obtaining AEMO's approval to conduct such Tests).

7.3 Additional Tests

- (a) Subject to clause 7.3(b) or, where applicable, a direction by AEMO to the contrary, Western Power may require the Service Provider to conduct Tests in addition to those required by the Scheduled Maintenance Plan if:
 - (i) Western Power considers, on a reasonable basis, that the Facility may not comply with the requirements of this Contract;
 - (ii) Western Power, acting reasonably, is not satisfied that the Service is currently Available and, within one month prior to that lack of satisfaction, the Service was Unavailable; or
 - (iii) there has been a modification to the Equipment comprising the Facility and Western Power, on a reasonable basis, considers there to be a risk that the Facility may no longer be able to provide the Services in accordance with the requirements of this Contract.
- (b) Prior to requiring a Test under clause 7.3(a), Western Power must notify the Service Provider of its concerns in relation to the Facility and, subject to clause 7.3(c), afford the Service Provider 5 Business Days within which to respond to those concerns. If the Service Provider fails to respond in time, or its response

fails to allay Western Power's concerns, Western Power may require a Test pursuant to clause 7.3(a).

- (c) Western Power may give the Service Provider less than 5 Business Days' notice to conduct a test pursuant to clause 7.3(a), but not less than 1 Business Day, if Western Power considers, on a reasonable basis, that such shorter period of time is necessary because the Facility poses a material threat to the integrity and safety of the Network, which threat may include, but is not limited to, the Facility's potential inability to provide the Services.
- (d) Subject to any direction by AEMO to the contrary (in circumstances where under the WEM Rules the approval of AEMO is required to conduct a Test) a Test must commence within the time nominated by Western Power, which time, unless the Parties otherwise agree, may not be earlier than 3 Business Days after issue by Western Power of a Notice requiring commencement of the Test.
- (e) A Test under this clause 7.3 must be undertaken in accordance with:
 - (i) any applicable requirements of the Scheduled Maintenance Plan;
 - (ii) any additional requirements of Western Power (as determined by Western Power having regard to the reasons for the Test); and
 - (iii) the requirements of the WEM Rules and any requirement of AEMO, provided that the WEM Rules apply to the conduct of the Test.

7.4 **Conduct of Tests**

- (a) In addition to any requirements in Chapter 3 of the WEM Rules, the Service Provider must provide Western Power with at least 5 Business Days' notice of the commencement date and time of any Test, which notice must also be provided to AEMO at least 2 business days prior to the commencement date, unless a different notice period for a Test is specified in the Scheduled Maintenance Plan or the WEM Rules require that AEMO be given more than 2 Business Days' notice.
- (b) Western Power may appoint up to two Representatives to witness the conduct of a Test. If Western Power appoints a Representative to witness a Test:
 - (i) the Service Provider must provide sufficient access to permit that Representative to be able to verify whether or not the Test has been conducted correctly; and
 - (ii) Western Power must ensure that its Representatives who attend a Test:
 - (A) do not interfere with the conduct of the Test; and
 - (B) comply with any reasonable occupational health and safety and security procedures applicable to the site where the Test is being conducted.
- (c) Subject to clause 7.6, the Service Provider must, within 10 Business Days after completion of a Test or within such period as may be specified in the Scheduled Maintenance Plan, provide Western Power with a reasonably detailed report that:
 - (i) describes the Test conducted; and
 - (ii) sets out the results of the Test.

- (d) In addition to the report required under clause 7.4(c), if the Test was requested by Western Power under clause 7.3(a), the Service Provider must provide Western Power with any other information reasonably requested by Western Power in respect of a Test, which information must be provided within the time reasonably requested by Western Power.

7.5 **Failure to conduct Test**

- (a) If the Service Provider fails to conduct a Test on the date, at the time, or in the manner, required by this clause 7, the Service Provider must, as soon as practicable (and in any event within 2 Business Days), notify Western Power of that fact. Such Notice must specify:
 - (i) if the Test was not conducted, why the Test was not conducted; or
 - (ii) if the Test was conducted but the manner in which it was conducted varied from the requirements of this clause 7, the manner in which the Test so varied; and
 - (iii) subject to 7.5(b), at least one alternative date and time when the Test may be conducted.
- (b) Subject to clause 7.5(c), if:
 - (i) a Test was not conducted, Western Power may require the Service Provider to conduct that Test at the date and time nominated by Western Power; or
 - (ii) a Test was conducted in a manner which varied from the requirements of this clause 7, then Western Power may require the Service Provider to re-perform that Test at the date and time nominated by Western Power unless the Service Provider is able to establish to Western Power's reasonable satisfaction that:
 - (A) the non-compliance was immaterial; or
 - (B) the non-compliance did not adversely impact the reliability of the results of the Test.
- (c) If AEMO directs that a Test required under clause 7.5(b)(i) or clause 7.5(b)(ii) should be conducted at some other date or time, then the Test must be conducted accordingly or, if AEMO nominates a range of dates and times, then the Test must be conducted at a date and time selected by Western Power from within that range.

7.6 **Deemed Unavailability due to failure to conduct or pass Tests**

If the purpose of a Test includes demonstrating that the Service was Available and the Test was not conducted as required by this clause 7 then, unless the Service Provider substantiates to Western Power's reasonable satisfaction within 3 Business Days after such Test that the Service is Available, the Service will be deemed to have been Unavailable for the period:

- (a) commencing upon the earlier of the date the Test was required to be conducted and the last in time of the following:
 - (i) the date from which the Service Provider last demonstrated to Western Power's reasonable satisfaction that the Service was Available;

- (ii) the last time that a Test demonstrated that the Service was Available;
 - (iii) the last time the Facility provided the Services in accordance with this Contract; or
 - (iv) the Start Date; and
- (b) ending upon the earlier of:
- (i) the Test being conducted in accordance with this Contract (including, but not limited to, the results of the Test providing confirmation pursuant to clause 7.2(a)); or
 - (ii) the Service Provider otherwise substantiating to Western Power's reasonable satisfaction that the Service is Available.

7.7 **Costs of Testing**

- (a) Subject to clause 7.7(b), the Service Provider is solely responsible for the costs of all Tests.
- (b) Western Power is responsible for the reasonable costs of its Representatives who attend a Test.
- (c) The conduct of a Test does not constitute dispatch of the Facility and is not taken into account for the purposes of any calculation relating to the number of times that the Facility has been dispatched.

8 Fees

8.1 **Amount of Fees**

- (a) In consideration of the provision of the Services in accordance with the requirements of this Contract, Western Power will pay the Service Provider the Fees for each month.
- (b) The Fees will be calculated in accordance with Schedule 5, and such calculation shall involve a reduction in the Fees to reflect any Unavailability of the Service during the Service Period.

8.2 **Invoicing procedures**

- (a) Within 23 Business Days of the end of a relevant month, the Service Provider will notify Western Power of its calculation of the proposed Monthly Fee payable for that month and provide sufficient detail to enable Western Power to understand how the Service Provider calculated the Fees.
- (b) The Service Provider must provide Western Power with such information as Western Power reasonably requests in order for Western Power to be able to reconcile the Fees payable for a month. Western Power may also use information available from AEMO and Western Power's own analysis to reconcile the Fees payable for a month.
- (c) If the information required to determine the Fees for a month is not available in sufficient time before the Service Provider gives Notice under clause 8.2(a), the Service Provider may determine its best estimate of those Fees. In such circumstances, the Service Provider must notify Western Power of the final Fees for a month once the Service Provider is able to determine those Fees.

- (d) The Service Provider may, at the time of notifying Western Power of the Fees for a month, notify Western Power of any adjustment to the invoice for that month that was required to take into account:
 - (i) the difference between an estimated determination of the Fees in respect of a prior month and a subsequent final determination made under clause 8.2(c); or
 - (ii) the fact that Fees invoiced for a month are no longer correct due to further information becoming available to the Service Provider (or Western Power) or other events occurring (including, but not limited to, the operation of clauses 4.3(a) and 7.6).
- (e) Within 28 Business Days of the last day of the previous month, the Service Provider must issue an Invoice to Western Power for the amount specified by the Service Provider in the relevant Notice. If Western Power disputes the Service Provider's determination of the Fees payable for a month, the Service Provider must still issue an Invoice less the amount in Dispute and Western Power must issue a Notice in accordance with clause 25.1.
- (f) An Invoice issued under clause 8.2(e) may include an adjustment to reflect Fees that have determined via the resolution of a Dispute pursuant to 8.2(e), provided that such Fees have not previously been accounted for in an Invoice.
- (g) An Invoice must:
 - (i) be in the form of a tax invoice complying with the GST Act;
 - (ii) quote the P Number for this Contract.
 - (iii) be submitted through Western Power's Online Payment Platform, unless the Parties have otherwise agreed in writing.

8.3 **Payment of Invoices**

- (a) Where an Invoice has been correctly issued in accordance with clause 8.2(e), 8.2(f), 8.2(g) and 8.2(g)(iii) and specifies a positive amount, Western Power will pay that Invoice within 20 Business Days of receipt of the Invoice.
- (b) Western Power:
 - (i) will pay the amount set out in an Invoice by electronic transfer to the bank account nominated by the Service Provider in Schedule 2 or as notified by the Service Provider from time to time;
 - (ii) is under no obligation to verify the accuracy of the bank account details provided by the Service Provider; and
 - (iii) is not responsible for any delays in payment or error due to factors outside the reasonable control of Western Power including delays in the banking system or incorrect details being provided by the Service Provider.
- (c) Where an Invoice specifies a negative amount, the Service Provider will pay the absolute value of that amount by electronic transfer to the bank account nominated by Western Power in Schedule 2 or as notified by Western Power from time to time, within 20 Business Days of issuing that Invoice.

9 Change in Law

- (a) If there is any Change in Law which is effective after the Execution Date:
- (i) which is inconsistent with the terms of this Contract; or
 - (ii) which materially impacts upon either Party's ability to perform its obligations under this Contract,

then the Parties must meet to negotiate in good faith the minimum necessary amendments to the provisions of this Contract required to enable this Contract to continue to be administered, to the extent practicable, in the same manner as it had been administered prior to the relevant Change in Law.

- (b) The Parties obligation to negotiate will commence as from the date that the Change in Law is made even if the Change in Law is to come into effect at a later date.
- (c) If the Parties are unable to agree the required amendments to the provisions of this Contract in accordance with clause 9(a) within 40 Business Days after the Change in Law is made, either Party may refer the matter to an Expert for determination in accordance with the procedures set out in clause 25.
- (d) If the Parties are unable to agree on the person to appoint as the Expert within 10 Business Days of the date the matter is referred to an Expert under clause 9(b), then either Party may request the President of the Resolution Institute of Australia (**Resolution Institute**) to appoint the Expert.
- (e) The following principles apply to the determination of the matter by the Expert:
- (i) each Party must propose to the Expert the set of amendments to the provisions of this Contract it considers reflects the principle described in clause 9(a) within 30 days of the date of the Expert's appointment;
 - (ii) the Expert must be directed to determine a set of amendments consistent with clause 9(a) and to deliver that determination no later than 30 days after receiving the Parties' proposed sets of amendments;
 - (iii) the Expert must do one of the following:
 - (A) choose one of the proposed sets of amendments in its entirety without amendment;
 - (B) choose one of the proposed sets of amendments in its entirety with amendment; or
 - (C) develop its own set of amendments, which may contain some amendments proposed by one or both Parties; and
 - (D) the set of amendments determined by the Expert in accordance with this clause 9 is deemed to take effect from the date of the Change in Law.
- (f) Unless otherwise agreed by the Parties, no amendment will be made to this Contract in accordance with this clause 9 that has the effect of increasing or decreasing the amounts payable by one Party to the other Party under this Contract.

- (g) Without limiting any clause of this Contract where compliance of the Service Provider is excused or deemed, each Party must continue to comply with its obligations under this Contract to the extent possible in accordance with the existing terms of this Contract until such time as the terms of this Contract are amended either by agreement of the Parties or determined by an Expert in accordance with this clause 9.

10 Liability of Western Power

10.1 Connection Contract

- (a) This Contract does not regulate the basis upon which the Facility may be connected to the Network or the basis upon which Western Power provides any services in respect of the Facility (for example entry or exit services). Other than those provisions of clause 21 which deal with the disconnection of the Facility from the Network, all such matters are regulated solely by a Connection Contract.
- (b) Western Power has no liability of any nature whatsoever (whether in contract, tort (including negligence), in equity, under statute or otherwise) under this Contract in respect of the connection of the Facility to the Network or the provision of any services in respect of the Facility.

10.2 Limitation of liability

The Parties acknowledge and agree:

- (a) separate liability limits apply with respect to Western Power and the Service Provider, in accordance with this clause 10.2;
- (b) with respect to Western Power:
 - (i) subject to clause 10.2(b)(ii), and other than in respect of any unpaid Fees, Western Power's liability is limited to the prescribed maximum amount for the purposes of section 126 of the *Electricity Industry Act 2004* and regulation 52 of the WEM Regulations; and
 - (ii) Western Power is not liable for:
 - (A) indirect damages or losses;
 - (B) loss of market, opportunity or profit (whether direct or indirect); or
 - (C) damages or losses to the extent that they arise from the Service Provider's failure to act in accordance with this Contract, a Law or Good Electricity Industry Practice; and
- (c) with respect to the Service Provider:
 - (i) subject to clause 10.2(c)(ii), the total amount recoverable from the Service Provider in respect of any and all claims arising out of any one or more events during the Contract Term with respect to, arising from, or in connection with, this Contract or the provision of the Service is limited to the lesser of the Contract Value and \$5 million; and
 - (ii) the Service Provider is not liable for:
 - (A) indirect damages or losses;

- (B) loss of market, opportunity or profit (whether direct or indirect); or
 - (C) damages or losses to the extent that they arise from Western Power's failure to act in accordance with this Contract, a Law or Good Electricity Industry Practice.
- (d) The Service Provider must not make any claim against Western Power which is inconsistent with the limitations on Western Power's liability in this clause 10.2.

10.3 **Western Power not responsible for the Facility**

- (a) The Service Provider is solely responsible for ensuring the Facility is in a condition such that it complies with this Contract and is able to provide the Services in accordance with this Contract.
- (b) Without limiting clause 10.3(a), Western Power has no obligation to the Service Provider to:
 - (i) in any way inspect, review or test the condition, capability or safety of the Facility including, but not limited to, identifying and notifying the Service Provider of any actual or potential deficiency or defect in the Facility; or
 - (ii) take any action to avoid or mitigate the risk of loss of, or damage to, the Facility (other than the obligations that it has under the Connection Contract in respect of the equipment comprising the Network).
- (c) To the extent that Western Power (including any person acting, or purporting to act, on its behalf) notifies the Service Provider of any actual or potential deficiency or defect in the Facility, or expresses any opinion in respect of such matters, the Service Provider undertakes that it will not rely on such notification or opinion and will make its own independent assessment of such matters.
- (d) The Service Provider will indemnify and keep Western Power indemnified in respect of any Claim brought by, or on behalf of, the Service Provider where the basis of such Claim is that the Service Provider has in any way relied on a notification or opinion referred to in clause 10.3(c).
- (e) Any inspections, tests or reviews of the Facility undertaken by Western Power are solely for Western Power's own purposes (including, but not limited to, assessing the impact of the Facility on the Network) and are not undertaken for the purposes of providing advice of any nature to the Service Provider.
- (f) No review, comment, approval, consent, rejection, refusal, expression of satisfaction or dissatisfaction with, supervision or superintendence by or on behalf of Western Power in respect of the Facility, nor any failure by Western Power to do any of those things will:
 - (i) limit or exclude any obligation or liability of the Service Provider;
 - (ii) prejudice any of Western Power's rights against the Service Provider;
 - (iii) impose on Western Power any duty of care to the Service Provider (whether in contract, tort or otherwise);
 - (iv) result in Western Power assuming any responsibility or liability for the adequacy, quality, compliance or fitness for purpose of the Facility or the Services or for any document provided by the Service Provider, or for any errors in or omissions from any such document; or

- (v) constitute a representation that Western Power has checked any document, work or service for errors, omissions or compliance with the requirements of this Contract.

11 Liability of Service Provider

11.1 General indemnity

Subject to clause 10.2(c), the Service Provider indemnifies Western Power and Western Power's officers, agents and employees, and must keep Western Power and its officers, agents and employees indemnified, against Losses they suffer or incur arising from or in connection with any:

- (a) breach of contract by the Service Provider;
- (b) tortious act or omission (including negligent act or omission) of the Service Provider;
- (c) breach by the Service Provider of any Law.

11.2 Third Party Claims

Subject to clause 10.2(c), the Service Provider indemnifies Western Power and Western Power's officers, agents and employees, and must keep Western Power and its officers, agents and employees indemnified, against any Losses they suffer or incur due to any Claims brought by a Third Party against Western Power or its officers, agents or employees arising from or in connection with any:

- (a) failure by the Service Provider to provide the Services in accordance with this Contract (howsoever caused);
- (b) breach of contract by the Service Provider;
- (c) tortious act or omission (including negligent act or omission) of the Service Provider; and
- (d) breach by the Service Provider of any Law.

11.3 Conduct of litigation

- (a) If a Claim from a Third Party is made against Western Power or Western Power's officers, agents or employees in the circumstances described in clause 11.2, Western Power must, as soon as reasonably practicable after determining that the Claim falls within clause 11.2:
 - (i) notify the Service Provider in writing of the Claim; and
 - (ii) provide the Service Provider with reasonable details about the Claim (to the extent available to Western Power).
- (b) A failure to comply with clause 11.3(a) does not affect the scope or operation of the indemnity in clause 11.2.
- (c) Nothing in clause 11.3(a) requires Western Power to provide the Service Provider with any legal advice received by Western Power in relation to the Claim made by a Third Party.

- (d) Where a Claim has been made by a Third Party as contemplated in clause 11.3(a), Western Power may either:
 - (i) conduct the defence of the Claim itself; or
 - (ii) at any time require, by written Notice to the Service Provider, that the Service Provider take over the defence of the Claim.
- (e) The Party conducting the defence of the Claim must keep the other Party informed of all material matters relating to the conduct of any defence in respect of the Claim.
- (f) The Service Provider, if conducting the defence of a Claim in accordance with clause 11.3(d)(ii):
 - (i) must have regard to Western Power's expressed views if those views are confirmed in writing and are reasonable having regard to the legitimate interests of both Parties; and
 - (ii) may not settle a Claim without the consent of Western Power, which consent will be given if Western Power is satisfied the Service Provider has the financial resources to meet the Claim.

12 Confidential Information

12.1 Confidentiality obligations

- (a) A Party must:
 - (i) keep confidential, and not use or disclose, any Confidential Information of the other Party, except as permitted by this Contract; and
 - (ii) immediately notify the other Party if it becomes aware of any loss or unauthorised use, access, copying or disclosure of any Confidential Information of the other Party.
- (b) A Party may, to the extent necessary:
 - (i) use Confidential Information of the other Party for the purposes of performing the relevant obligations or exercising the relevant rights arising under or pursuant to this Contract; and
 - (ii) disclose Confidential Information of the other Party to its officers, employees, delegates, contractors, partners, agents and service providers who have a specific need to access that Confidential Information, but only to the extent the Confidential Information is needed for the purpose of performing the relevant obligations or exercising the relevant rights arising under or pursuant to this Contract.

12.2 Exclusions

The obligations in clause 12.1 do not apply to:

- (a) any disclosure of information to legal advisers who are under a duty of confidence;
- (b) any disclosure made with the disclosing Party's prior written consent, which can be withheld in its discretion and may be given subject to conditions;

- (c) any disclosure of information required to be disclosed to any Authority in connection with the granting of any Approval required under or administration of this Contract;
- (d) any disclosure required by Law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or statutory duty;
- (e) information which is, at the relevant time, in the public domain other than as a result of a breach of confidence; and
- (f) any disclosure of information to the Electricity Review Board, the Economic Regulation Authority, or AEMO contemplated by this Contract or as otherwise may be required to enable AEMO to dispatch the Service under and in accordance with this Contract or under the WEM Rules or the Access Code.

12.3 **No unauthorised copying**

Subject to any obligation under any Law to do so, a Party must not copy any document containing the other Party's Confidential Information except as necessary to exercise its rights or discharge its obligations under this Contract.

12.4 **Secure storage**

A Party must ensure that proper and secure storage is provided for the Confidential Information while in its Possession, provided that if a Party is a corporation it may retain any such documents or parts of documents that form part of board papers (or other formal approval processes) of such corporation and which are required to be retained by that corporation under usual corporate governance requirements.

12.5 **Return of information**

Each Party must, and must procure that its Personnel, return to the other Party, or destroy or delete, as directed by the other Party, all original documents and copies (including in electronic form) in its possession, custody or control which comprise, contain, reproduce, are based on, utilise or relate to the Confidential Information of the other Party, for 7 years post termination of this Contract.

12.6 **Publicity**

Neither Party may make any public announcement or issue any media release relating to this Contract or the performance of the Services without first providing a copy of such announcement or media release to the other Party.

12.7 **Freedom of Information access**

The Service Provider acknowledges that Western Power is subject to the *Freedom of Information Act 1992 (WA)* and that this Contract or documents relating to this Contract may become the subject of an application under that Act and access to them may need to be given to a Third Party in accordance with that Act. Western Power has no liability to the Service Provider whatsoever for giving access to a document in accordance with the *Freedom of Information Act 1992 (WA)*.

12.8 **Remedies**

Each Party acknowledges and agrees that any breach or threatened breach of this clause 12 may cause a Party immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently, each Party has the right, in addition to any other remedies available at Law, to seek injunctive relief or compel specific performance of this clause 12 in respect of any such breach or threatened breach.

12.9 **Survival of obligations**

- (a) Clauses 12.1 to 12.9 survive the termination of this Contract and remain enforceable for a period of 7 years from the date of such termination.
- (b) Any person who ceases to be a Party to this Contract continues to be bound by these clauses 12.1 to 12.9.

13 **Intellectual Property**

13.1 **Acknowledgements**

The Service Provider acknowledges that:

- (a) Western Power owns:
 - (i) the Intellectual Property of Western Power; and
 - (ii) all documents relating to the affairs or business of Western Power, or which come into the Service Provider's possession in the course, and by reason, of this Contract, whether or not the same were originally supplied by Western Power;
- (b) Western Power has spent and will spend time, effort and money in establishing and maintaining its customer base, employee skills, and its Intellectual Property; and
- (c) it is reasonable that the Service Provider should enter into the representations and warranties contained in clauses 12 and 13 of this Contract.

13.2 **Service Provider Owned IP**

Nothing in this Contract affects the ownership of Service Provider Owned IP.

13.3 **Intellectual Property – licensing**

The Service Provider grants to Western Power a perpetual, irrevocable, royalty-free, world-wide licence (or sub-licence, as the case may be) to the IP rights comprised in the Service Provider Licensed IP and the Service Provider Owned IP to receive the Service or otherwise enjoy its rights under this Contract.

14 **Security**

14.1 **Provision**

If the Contract Details indicate that the Service Provider is required to provide Security, then the Service Provider must provide Security to Western Power by the Condition Precedent Satisfaction Date.

14.2 **Security requirements**

The Security must be an obligation in writing that:

- (a) is from a Security Provider;
- (b) is a guarantee or bank undertaking in a form and on terms substantially similar to the Form of Security;;

- (c) is duly executed by the Security Provider and delivered unconditionally to Western Power;
- (d) constitutes valid and binding unsubordinated obligations of the Security Provider to pay to Western Power amounts in accordance with its terms;
- (e) permits drawing or claims by Western Power up to the Security Amount;
- (f) has an effective date on or before the Conditions Precedent Satisfaction Date specified in Schedule 3, which must be before the Start Date;
- (g) has an expiry date that is at least 12 months after the End Date (as extended by the Extension Period, if applicable).

14.3 **Purpose of Security**

Where Security is required under clause 14.1, it is to be provided and maintained by the Service Provider for the purposes of:

- (a) ensuring the due and proper performance of all of the Service Provider's obligations under this Contract; and
- (b) allocating to the Service Provider the risk in respect of any claimed entitlements of Western Power under or in connection with this Contract pending the resolution under clause 25 or clause 26 of any Claim or Dispute in relation to such entitlements.

14.4 **Set-off and recourse to Security**

Where Security has been provided pursuant to clause 14.1 or clause 14.6(a), Western Power may have recourse to any such Security (including, but not limited to, converting the Security into money) to recover:

- (a) any amounts that Western Power in good faith claims are due from the Service Provider to Western Power pursuant to this Contract but which have not been paid;
- (b) any Losses that Western Power in good faith claims it has suffered or incurred due to a breach of this Contract by the Service Provider or as a direct or indirect consequence of the Service Provider's negligence; and
- (c) any other amounts paid or payable by Western Power in respect of matters for which Western Power in good faith claims the Service Provider is liable or responsible for pursuant to this Contract.

14.5 **No injunction or beneficial interest**

- (a) The Service Provider must not take any steps to injunct or otherwise inhibit or restrain:
 - (i) the issuer of any Security from paying Western Power under that Security;
 - (ii) Western Power from taking any steps for the purposes of making a demand, or receiving payment, under any Security; or
 - (iii) Western Power from using any money received under any Security.
- (b) Each Security held or utilised by Western Power in accordance with this clause 14 is not held by Western Power as trustee and the Service Provider will have no beneficial interest in any Security or the proceeds of any Security. Western Power

is not obliged to invest any proceeds, or to account for any advantage, derived from holding or retaining such proceeds, or to hold such proceeds in a separate or particular account. Any interest earned on any Security, as well as any proceeds of any Security, will be to the benefit of Western Power.

14.6 **Replacement of Security**

- (a) If any Security has been provided pursuant clause 14.1 and:
 - (i) Western Power draws upon that Security; or
 - (ii) a Security Invalidation Event occurs in relation to that Security,the Service Provider must, within 5 Business Days of such drawing or Security Invalidation Event, as the case may be, provide Western Power with a replacement Security that complies with the requirements of this Contract so that the total value of the Security held by Western Power is equal to the Security Amount.
- (b) If, pursuant to clause 14.2(g), a Security has an expiry date, the Service Provider must provide a new Security to Western Power that complies with the requirements of this Contract (including that it must equal the Security Amount) no later than 15 Business Days prior to the relevant expiry date. Upon the provision of that new Security, Western Power will return the existing Security held by it to the Service Provider.
- (c) If the Service Provider fails to comply with clause 14.6(a) or clause 14.6(b), Western Power may make a demand on, and convert to cash, the entire amount of the existing Security held by it and may, where applicable, exercise any of its rights under clause 14.4 or hold such cash until such time as the Service Provider provides replacement Security complying with the requirements of this Contract.

14.7 **Release of Security on expiry or termination**

- (a) Subject to clause 14.4 and 14.7(b), Western Power will release to the Service Provider any Security held under this Contract as soon as practicable following the later of:
 - (i) the End Date (as extended by the Extension Period, if applicable);
 - (ii) when all services under the NCESS Contract are completed in accordance with the NCESS Contract; or
 - (iii) when all sums of money owed by the Service Provider to Western Power under this Contract have been paid in full.
- (b) Before releasing any Security under clause 14.7(a), Western Power may have recourse to any amounts of the Security to which it is, as at the date of termination or expiry of this Contract, entitled to have recourse. Where Western Power is contemplating as at the date of expiry or termination whether it will have recourse to the Security then, subject to it notifying the Service Provider of this fact, it may hold the Security for the lesser of a further 30 days and the date Western Power determines it will not have recourse to the Security.

14.8 **Failure to provide Security**

- (a) Without limiting Western Power's remaining remedies under this Contract, for any period during which the Service Provider fails to provide any Security in accordance with the requirements of this Contract, Western Power may suspend any payments that are due to the Service Provider.

- (b) Any payments suspended under clause 14.8(a) will be paid by Western Power within 20 Business Days of the Service Provider providing Security to Western Power in compliance with the requirements of this Contract.

15 Insurance

15.1 Insurances to be effected and maintained

The Service Provider must (at its own cost) effect and maintain the insurance policies listed, and on the terms and conditions set out, in Schedule 6.

15.2 Approval of the terms and conditions of insurance

The policies listed in Schedule 6 must be effected with a reputable insurer and maintained by the Service Provider throughout the Service Term, which insurer must be approved in writing by Western Power whose approval will not be unreasonably withheld.

15.3 Common terms

- (a) Unless otherwise stated in this Contract, every policy of insurance required under clause 15.1 must:
 - (i) be effected on or before the Start Date and maintained for the Service Term and any Extension Period(s);
 - (ii) except for compulsory statutory workers' compensation and compulsory motor vehicle insurance, include a cross liability endorsement that all agreements and endorsements, except limits of liability, must operate in the same manner as if there was a separate policy of insurance covering each party insured and a failure by any insured party to observe and fulfil the terms and conditions will not affect any other party;
 - (iii) provide that a notice of Claim given to the insurer arising from this Contract must be accepted by the insurer as a notice of Claim given by all parties insured under the policy;
 - (iv) provide that any breach of the conditions of the insurances by the Service Provider or the Service Provider's Personnel for whose actions the Service Provider is responsible, must not in any way prejudice or diminish any rights which Western Power has under the insurances; and
 - (v) provide the insurance is primary with respect to the interests of Western Power and any other insurance maintained by it is excess to, and not contributory with, the insurance policies listed in Schedule 6.
- (b) The Service Provider must pay all premiums and all deductibles on the insurance policies listed in Schedule 6 when due.
- (c) Where Western Power has an insured interest or may be entitled to insurance proceeds under any policy listed in Schedule 6, the Service Provider must cause its insurers to waive all rights of subrogation against Western Power in respect of a Claim arising under the insurance policy.

15.4 Subcontractor insurance

If the Service Provider subcontracts any part of the Services, the Service Provider must ensure that every Subcontractor purchases and, for the duration of the subcontract, maintains all the insurance required under clause 15.1.

15.5 **Access to policies**

- (a) A copy of the certificate of currency for a policy that is required to be maintained under Schedule 6 must be provided by the Service Provider to Western Power:
 - (i) at least 5 Business Days before the Start Date;
 - (ii) throughout the Service Term, within 5 Business Days of the policy being renewed or extended; and
 - (iii) within 5 Business Days of a written request by Western Power.
- (b) The certificates of currency provided by the Service Provider to Western Power under clause 15.5(a) must contain:
 - (i) the limit of cover of the policy;
 - (ii) the amount of the deductible that the policy is endorsed with;
 - (iii) the names of the insurer;
 - (iv) all exclusions in the policy; and
 - (v) all terms in the policy that an experienced service provider, having regard to the nature of the Services and the risks to which the policy relates, would reasonably consider to be unusual.

15.6 **Consequences of non-compliance**

If the Service Provider fails to maintain the insurances required under this Contract, or fails to provide certificates of currency in accordance with clause 15.5, Western Power may suspend payment of amounts due under this Contract until the failure has been remedied. Any payments so suspended will be paid to the Service Provider within 20 Business Days of the Service Provider remedying the default to the satisfaction of Western Power.

15.7 **Service Provider's further obligations**

- (a) The Service Provider must not do, or omit to do, any act that would be grounds for an insurer to refuse to pay a Claim made under any of the policies of insurance required under clause 15.1 of this Contract.
- (b) Within 24 hours of receipt by the Service Provider of a notice of cancellation, non-renewal or alternation, or any other notice that materially affects, or may materially affect, the nature of the risks insured under any of the policies of insurance required under clause 15.1 of this Contract, the Service Provider must give Western Power a copy of that notice.

15.8 **Notices of potential Claims**

The Service Provider must, as soon as practicable and in writing, inform the relevant insurer and Western Power of any occurrence that may give rise to a Claim in connection with, any insurance policy required pursuant to clause 15.1, and must keep Western Power informed of all developments concerning such Claim.

15.9 **Primary**

Insurance does not limit the liabilities or obligations under other provisions of this Contract.

16 Jobs Act

16.1 Application of this clause and definitions

- (a) Clause 16.3 of this clause 16 only applies to the extent that:
 - (i) the Procurement Process for the Services provides that the Jobs Act will apply in respect of the Services, including through the Procurement Process, indicating that the Service Provider must provide a Participation Plan with respect to the provision of the Services; or
 - (ii) a written notice from Western Power to the Service Provider, issued from time to time, provides that the Jobs Act will apply in respect of the Services (or any part thereof) and that the Service Provider must provide a Participation Plan with respect to the provision of the Services.
- (b) Clause 16.4 of this clause 16 only applies to the extent that:
 - (i) the Procurement Process for the Services; or
 - (ii) a written notice from Western Power to the Service Provider, issued from time to time,

provides that:

- (iii) the Jobs Act will apply in respect of the Services (or any part thereof);
- (iv) Western Power has been granted an Exemption from complying with the full requirements of the Jobs Act with respect to the Services; and
- (v) a condition of this Exemption is that Western Power must provide reporting on the Services under the Jobs Act.

16.2 Definitions

In addition to the definitions provided elsewhere in this Contract, the following definitions only apply in relation to this clause 16:

Exemption means an exemption from the application of the Jobs Act issued under section 15 of the Jobs Act.

Jobs Act means the *Western Australian Jobs Act 2017 (WA)*, including the Western Australian Industry Participation Strategy made under that legislation as amended from time to time.

Participation Plan means the participation plan prepared as part of the Procurement Process and attached as Schedule 10 or which has been prepared subsequent to the Execution Date as contemplated by this clause 16, setting out the Service Provider's commitment in relation to the participation by local industry in the provision of the Services, that is:

- (a) in a form provided by Western Power;
- (b) prepared by the Service Provider; and
- (c) approved by Western Power,

as part of the Procurement Process.

Procurement Process means the NCESS procurement process where the Service Provider was awarded the Contract, including any request for tender, request for proposal, request for quotation, or expression of interest.

16.3 **Service Provider's obligations – Participation Plan required**

Where a Participation Plan is required to be prepared by the Service Provider in accordance with clause 16, the Service Provider must:

- (a) without limiting any obligation under this clause 16, take all reasonable steps to assist Western Power in complying with its obligations under the Jobs Act;
- (b) ensure that any subcontracts, which have been entered into in accordance with this Contract, provide the Service Provider with sufficient rights to allow the Service Provider to meet its obligations under this clause 16;
- (c) keep and maintain accurate and reasonably detailed books and records in connection with the Service Provider's compliance with this clause 16;
- (d) provide Western Power, on request and from time to time, with any books or records for the purposes of verifying the Service Provider's compliance with its obligations under this clause 16 and the Participation Plan;
- (e) permit Western Power or any person nominated by a Government Agency to, on request and from time to time:
 - (i) audit, examine and make copies of any books and records; and
 - (ii) interview or meet with any member of the Service Provider's Personnel or Third Party,for the purposes of verifying the Service Provider's compliance with its obligations under this clause 16;
- (f) submit to Western Power reports as to the matters covered by the Participation Plan in the form required by Western Power, with such reports to:
 - (i) be provided (unless Western Power otherwise indicates in writing):
 - (A) if the Contract Term is 1 year or less, within 2 months after the End Date; or
 - (B) if the Contract Term is longer than 1 year, within 2 months after:
 - (I) each anniversary of the Service Year with respect to that preceding year; and
 - (II) the End Date in respect of the Contract as a whole;
 - (ii) be provided upon request from time to time and within the time requested by Western Power (in its absolute discretion). For clarity, this right is in addition to the right in clause 16.3(f)(i);
 - (iii) provide Western Power with all information necessary for it to:
 - (A) assess the Service Provider's performance against the Participation Plan; and
 - (B) meet its obligations under the Jobs Act; and
 - (C) be endorsed and verified as being true and correct by the Service Provider's Chief Executive Officer, Managing Director or other authorised representative.

16.4 **Service Provider's obligations – exemption applies**

Where clause 16.1(b) applies, the Service Provider must:

- (a) without limiting any obligation under this clause 16, take all reasonable steps to assist Western Power in complying with its obligations under the Jobs Act;
- (b) ensure that any subcontracts, which have been entered into in accordance with this Contract, provide the Service Provider with sufficient rights to allow the Service Provider to meet its obligations under this clause 16;
- (c) keep and maintain accurate and reasonably detailed books and records in connection with the Service Provider's compliance with this clause 16; and
- (d) permit Western Power or any person nominated by a Government Agency to, on request and from time to time:
 - (i) audit, examine and make copies of any books and records; and
 - (ii) interview or meet with any member of the Service Provider's Personnel or Third Party,

for the purposes of verifying the Service Provider's compliance with its obligations under this clause 16.

16.5 **Western Power's use of Jobs Act information**

- (a) The Service Provider acknowledges and agrees that Western Power may disclose any information provided to it pursuant to this clause 16 to any Government Agency responsible for administering the Jobs Act in order for Western Power to comply with its obligations under the Jobs Act.
- (b) The rights in this clause 16.5 are in addition to, and do not derogate from, any of the rights or obligations provided for in clause 12.

16.6 **Participation Plan amendment**

- (a) The Parties may agree amendments to a Participation Plan, with any amendments to a Participation Plan to be in writing and signed by both Parties.
- (b) The amended Participation Plan must be endorsed and verified as being true and correct by the Service Provider's Chief Executive Officer, Managing Director or other authorised representative.

16.7 **Consequence of non-compliance with Jobs Act**

- (a) A breach of this clause 16 by the Service Provider is a Critical Default, and clause 22.2(b) applies.
- (b) In addition to Western Power's other rights under this Contract, the Service Provider acknowledges and agrees that failure to comply with any obligations imposed on it by this clause 16 may result in Western Power or any Government Agency not awarding work to the Service Provider in the future.

16.8 **Survival of Jobs Act obligations**

In addition to the survival rights provided for in clause 22.4(d), this clause 16 will survive the termination or expiry of this Contract to the extent necessary for:

- (a) Western Power to comply with its obligations with respect to the Jobs Act; and
- (b) the Service Provider to comply with its obligations under this clause 16.

17 Record keeping

17.1 Records to be maintained

The Service Provider must, in accordance with Good Electricity Industry Practice, maintain records:

- (a) evidencing, at all times during the Service Term, whether the Facility was Available or Unavailable (including all necessary information to determine whether the Facility was Available or Unavailable);
- (b) of all Tests conducted pursuant to this Contract (including the procedures used to conduct the Test, the persons who conducted or witnessed the Test, the results of the Test and any actions taken consequent upon the Test);
- (c) of all repairs to, and maintenance of, the Facility for the purposes of ensuring that it is able to provide the Services;
- (d) of all Notices that have been made or received by telephone under this Contract; and
- (e) of any information required to be recorded in this Contract by the Technical Rules, and provide Western Power with reasonable access to the information upon request by Western Power; and
- (f) that are otherwise required to be maintained by the WEM Rules or any other Laws applicable to the provision of the Services,
("Records").

17.2 Form and Inspection of records

- (a) Records may be maintained in hard copy or electronically. However, where Records are maintained electronically, they must be maintained in a form such that the Records can be loaded onto the computer systems used by Western Power and those Records read by Western Power without the requirement for Western Power to purchase software other than software available off the shelf or otherwise in common usage amongst Western Australian electricity industry participants.
- (b) Records must be maintained for a period of 7 years from when they are created, or for such longer period required by the WEM Rules or other Laws.
- (c) The Service Provider must, within 5 Business Days' notice from Western Power, make any Records available for:
 - (i) an audit under clause 17.3; or
 - (ii) inspection and copying by Western Power or any agent who has been appointed by Western Power to attend to such inspection and copying.

17.3 Auditing

- (a) Western Power, or such persons as Western Power appoints, may, subject to the confidentiality provisions in clause 12:

- (i) undertake an audit of any Records:
 - (A) annually during the Service Term; and
 - (B) (in addition to the annual audit) if there has been:
 - (1) Unavailability of the Service for a period of more than 18 days; or
 - (2) an incident in respect of the Facility which threatened, or adversely affected, the safety and integrity of the Network; and
 - (ii) make and retain copies of any Records that have been audited, or will be audited, pursuant to clause 17.3(a)(i)(A) or clause 17.3(a)(i)(B).
- (b) In relation to an audit under clause 17.3(a), the Service Provider must:
- (i) provide all assistance and co-operation reasonably required to enable the conduct of such audit; and
 - (ii) answer, to the best of its knowledge and belief (established after making all necessary enquiries), any questions asked of it (including providing those answers in writing if requested to do so).

18 Information Security

18.1 Interaction with Western Power systems

If, in the course of provision of the Services, the Service Provider interacts with any of Western Power's information technology systems, the Service Provider must:

- (a) comply with all procedures, protocols and other requirements specified by Western Power from time to time; and
- (b) maintain appropriate and up to date physical and electronic security systems and protocols (including, but not limited to, firewalls, maintaining usernames and passwords, and using anti-virus or virus protection programs) to protect the Service Provider's and Western Power's information technology systems from any unauthorised access, damage, corruption or disclosure.

18.2 Access to Western Power systems

If the Service Provider is given access to any Western Power information technology systems, the Service Provider:

- (a) must adhere to the Australian Energy Sector Cyber Security Framework published (and updated from time to time) by AEMO when the Service Provider and/or its Personnel develops, accesses, transmits, processes, stores or otherwise handles Western Power's Confidential Information or other sensitive operational information or other sensitive data;
- (b) must not install any software on or make any modifications to the systems unless expressly authorised by Western Power in writing; and
- (c) must notify Western Power immediately by telephone on becoming aware of any actual or threatened unauthorised access or other security breach (including

disclosure of passwords or encryption or signing keys or loss of security tokens), or any risk of damage to, corruption of, or disclosure of, the systems.

19 Warranties and representations

19.1 Warranties and representations by the Service Provider

The Service Provider represents and warrants to Western Power as at the Execution Date of this Contract and at all times during the Contract Term that:

- (a) it has, and its Personnel have, the expertise, experience and skills required to provide the Service;
- (b) it is legally entitled to use any of the Service Provider's existing Intellectual Property used by it in connection with the provision of the Service;
- (c) the provision of the Service, any goods or materials provided as part of the Service, any product of the Service and Western Power's or AEMO's use of those things do not and will not infringe the Intellectual Property of any Third Party;
- (d) any tools and Equipment used at the Facility by the Service Provider or its Personnel will be in a safe working condition and will, without requiring that the Facility be manned, be operated by suitable qualified and experienced persons;
- (e) it has full legal capacity and power to enter into this Contract and carry out the transactions that this Contract contemplates and discharge all of its obligations under this Contract;
- (f) it has entered into this Contract by relying entirely upon its own independent appraisal and assessment of all relevant matters;
- (g) it has not relied upon any representations or information made, or provided by, Western Power in determining whether it will enter into this Contract and in determining whether it will be able to comply with its obligations under this Contract;
- (h) the Service Provider's obligations under this Contract are valid, binding and enforceable against the Service Provider in accordance with their terms;
- (i) this Contract and any other transaction under it does not:
 - (i) contravene the Service Provider's constituent documents, any Law, or any of the Service Provider's obligations or undertakings by which the Service Provider or any of the Service Provider's assets are bound; or
 - (ii) cause to be exceeded any limitation on the Service Provider's, or the Service Provider's directors', powers;
- (j) neither the Service Provider nor any of its Related Bodies Corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (k) it holds each Approval that is necessary or desirable to:
 - (i) provide the Service under this Contract, including any Approvals required under any applicable Law; and

- (ii) enable it to properly enter into this Contract and to carry out the transactions that this Contract contemplates,

and it is complying with any conditions to which any of these Approvals is subject.

19.2 **Warranties and representations by the Western Power**

Western Power represents and warrants to the Service Provider as at the Execution Date of this Contract and at all times during the Contract Term that:

- (a) it has full legal capacity and power to enter into this Contract and carry out the transactions that this Contract contemplates;
- (b) Western Power's obligations under this Contract are valid, binding and enforceable against Western Power in accordance with their terms; and
- (c) this Contract and any other transaction under it does not:
 - (i) contravene Western Power's constituent documents, any Law, or any of Western Power's obligations or undertakings by which Western Power or any of Western Power's assets are bound; and
 - (ii) cause to be exceeded any limitation on Western Power's, or Western Power's directors', powers.

20 **Force Majeure**

20.1 **Force majeure relief**

Non-performance as a result of a Force Majeure Event by either Party of an obligation or condition required by this Contract to be performed:

- (a) will be excused during the time and to the extent that such performance is prevented, wholly or in part, by the Force Majeure Event; and
- (b) will not to that extent give rise to any liability to the other Party arising from that non-performance,

but no Party will be relieved by a Force Majeure Event of any obligation to pay a sum of money under this Contract or from liability under any indemnity in this Contract.

20.2 **Affected Person's obligations**

A Party who claims that it is unable to perform an obligation required by this Contract to be performed (**Affected Party**), which by reason of a Force Majeure Event, must:

- (a) notify the other Party as soon as possible giving:
 - (i) reasonably full particulars of the event or circumstance of the Force Majeure Event;
 - (ii) the date of commencement of the event or circumstance and an estimate of the period of time required to enable the Affected Party to resume full performance of its obligations; and
 - (iii) where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;

- (b) as soon as possible, provide the other Party with any information that the other Party requests in respect of the Force Majeure Event, including, but not limited to, its impact on the Affected Party's ability to perform its obligations under this Contract and the measures being taken by the Affected Party to overcome it;
- (c) use reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as expeditiously as possible, provided that nothing in this clause 20 will require a Party to settle a strike, lockout, ban or other industrial disturbance against its own judgment;
- (d) resume performance as expeditiously as possible after termination of the Force Majeure Event; and
- (e) notify the other Party when the Force Majeure Event has terminated or abated to an extent which permits resumption of performance to occur.

20.3 **In case of breach**

An Affected Party is not obliged to incur any expenditure in complying with clause 20.2(c) if the Force Majeure Event is constituted by a breach of, or failure to comply with, this Contract by the other Party.

20.4 **Limits of Force Majeure**

No Force Majeure Event affecting the performance of this Contract by either Party will operate to prevent a cause of action arising from and after the expiration of the period of time within which, by the exercise of reasonable diligence and the employment of all reasonable means, that Party could have remedied the situation preventing its performance.

21 **Disconnection**

21.1 **Right to Disconnect**

- (a) Western Power may disconnect the Facility from the Network if:
 - (i) the Facility fails to comply with the requirements of this Contract and, due to such failure, there is a material risk to the safety and integrity of the Network; and
 - (ii) the Service Provider fails to remedy that failure within 10 Business Days of receipt of a Notice from Western Power instructing the Service Provider to do so.
- (b) Western Power may reduce the 10 Business Day period in clause 21.1(a) if Western Power considers that doing so is required due to the immediacy of the threat to the safety and integrity of the Network.
- (c) In addition to its rights under clause 21.1(a), Western Power may immediately disconnect the Facility from the Network if a failure of the Facility to comply with the requirements of this Contract gives rise to, or may give rise to, an Emergency.

21.2 **Reconnection**

If Western Power disconnects the Facility under clause 21.1, Western Power is not required to reconnect the Facility until such time as the failure to comply with this Contract has been remedied to Western Power's satisfaction and Western Power is otherwise satisfied that it is safe to reconnect the Facility.

21.3 **Costs**

The Service Provider must, on demand, reimburse Western Power for all costs incurred in disconnecting and reconnecting the Facility under this clause 21.

21.4 **Interaction with other rights**

- (a) Western Power's rights to disconnect the Facility under this clause 21 are in addition to any rights Western Power has to disconnect the Facility:
 - (i) under any other contract between the Parties (including the Connection Contract);
 - (ii) under any contract between Western Power and a retailer to the Service Provider; or
 - (iii) at Law.
- (b) No disconnection of the Facility by Western Power under this Contract will be regarded as a breach by Western Power of any other contractual arrangement between the Parties.

21.5 **Effect on Availability**

The Service will be regarded as Unavailable during any period in which the Facility is disconnected from the Network due to:

- (a) Western Power disconnecting the Facility under clause 21.1;
- (b) Western Power disconnecting the Facility under any other contractual arrangement between the Parties due to the Service Provider's breach of that contractual arrangement; or
- (c) Western Power disconnecting the Facility pursuant to any other contractual or legal right because the Service Provider has breached a contractual or legal obligation binding upon it.

22 Default and termination

22.1 **Notice of default**

- (a) Subject to clause 4.5, if, at any time during the Contract Term, a Party breaches this Contract, the other Party may issue a Breach Notice.
- (b) A Breach Notice must:
 - (i) state that the Notice is a Breach Notice; and
 - (ii) identify and give details of the breach of this Contract on which the Breach Notice is based.
- (c) If a Party receives a Breach Notice, that Party must remedy the breach within a reasonable time agreed by the Parties having regard to the matter giving rise to the breach and the actions required to remedy the breach, except in the case of:
 - (i) Western Power failing to pay the Service Provider a sum in accordance with this Contract which Western Power must remedy within 20 Business Days; or

- (ii) a breach not capable of remedy.
- (d) If a Party receives a Breach Notice:
 - (i) and fails to remedy the breach within the time specified; or
 - (ii) that identifies a breach that is not capable of remedy,
 a **Critical Default** has occurred and the other Party may exercise its rights in accordance with clause 22.2.

22.2 Termination for default or insolvency

Notwithstanding clause 22.1, a Party may, by written Notice to the other Party, terminate this Contract with immediate effect if:

- (a) the other Party suffers an Insolvency Event; or
- (b) a Critical Default occurs due to the other Party.

22.3 Western Power's right to terminate

In addition to clause 22.2, and notwithstanding clause 22.1, Western Power may, by written Notice to the Service Provider, terminate this Contract with immediate effect:

- (a) if the Service Provider ceases to have full legal and beneficial ownership of the Facility; or
- (b) if an Unavailability Termination Event occurs.

22.4 Consequences of termination

- (a) Subject to clause 22.4(b), Western Power is not liable to the Service Provider if it terminates this Contract under this clause 22.
- (b) Western Power is only liable for Fees due in accordance with this Contract before 8.00 am on the Trading Day immediately after the date specified in the termination Notice.
- (c) The expiry or termination of this Contract is without prejudice to the accrued rights of the Parties as at the date of expiration or termination.
- (d) Clauses 10 (Liability of Western Power), 11 (Liability of Service Provider), 14.7 (Release of Security on expiry or termination), 12 (Confidential Information), 13 (Intellectual Property), 16 (Record Keeping), 24 (GST), 25 (Dispute resolution procedure), 27 (Notices), 28 (General), 29 (Interpretation) and this clause 22.4 survive the expiration or termination of this Contract, as do any other clauses which of their nature are intended to survive, or which evidence an intention to survive termination or expiration.

23 Relationship of the Parties

23.1 Western Power/Service Provider relationship

- (a) The Service Provider acknowledges and agrees that it is an independent service provider and not an agent of Western Power and that the Service Provider has no authority to bind Western Power by contract or otherwise.

- (b) In carrying out the respective obligations under this Contract, each Party is acting as an independent contractor to the other Party. Nothing in this Contract creates a partnership, trust or agency between the Parties or imposes any fiduciary duties on either Party in relation to the other, unless expressly stated.

24 GST

24.1 General

- (a) Unless the context indicates otherwise, words or expressions used in this clause 24 which are defined in the GST Act have the same meaning in this clause 24 as in the GST Act.
- (b) Unless otherwise stated, all amounts payable or the value of other consideration provided in respect of the supplies made under this Contract are exclusive of GST and where the value of any supply is to be calculated with reference to a monetary turnover figure, the GST exclusive value of the monetary turnover shall be used in calculating the value of the supply.

24.2 Taxable supplies

- (a) Subject to clause 24.3 applying, this clause sets out the GST consequences of this Contract.
- (b) If a Party (**supplier**) makes a taxable supply under or in connection with this Contract:
 - (i) the consideration otherwise payable or to be provided for that supply is increased by, and the Party paying or providing the consideration (**recipient**) must also pay to the supplier, an amount equal to the GST payable by the supplier on that supply;
 - (ii) subject to the supplier complying with clause 24.2(b)(iii), the recipient must pay the GST amount in Australian dollars, at the same time and to the same extent as it must pay or provide the consideration for that supply; and
 - (iii) the supplier must issue a tax invoice to the recipient of the supply at or before the time of payment of the GST inclusive consideration or at such other time as the Parties agree.
- (c) Where any amount is payable to a Party as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or any other amount incurred by that Party, then such amount must be reduced by any part of that loss, cost, expense or other amount which is attributable to GST for which that Party, or the representative member of any GST group of which that Party is a member, is entitled to an input tax credit.
- (d) If a Party becomes aware of an adjustment event, that Party agrees to notify the other Party as soon as practicable after becoming so aware, and the Parties agree to take whatever steps are necessary, including the issue of an adjustment note, and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply or any refund of any GST (or part of GST) is paid as soon as is practicable but no later than 10 Business Days after the Party has satisfied itself that the adjustment event has occurred.

24.3 Contract to reverse charge GST on a supply by a non-resident

- (a) Where the supplier:

- (i) is a non-resident for Australian tax purposes; and
- (ii) does not make any supply under this Contract through an enterprise that the supplier carries on in Australia or through a resident agent,

the supplier must inform the recipient of the fact, and this clause 24.3 will apply.

- (b) The supplier and the recipient agree that the GST on any taxable supply made by the supplier under this Contract will be payable by the recipient under Division 83 of the GST Act.
- (c) The recipient warrants that it is registered for GST purposes and will remain so registered for the Service Term.
- (d) Where this clause 24.3 applies, the supplier must complete form NAT 3346 (or any substitute form) which can be found on the Australian Tax Office website, and supply this to the recipient before any payments are made under this Contract.

25 Disputes

25.1 Notice of Dispute

In the event of a Dispute, but excluding a Dispute concerning a Change in Law the subject of clause 9, either Party may deliver a Notice of the Dispute to the other Party (**Notice of Dispute**).

25.2 Additional information

A Party that delivers a Notice of Dispute must also provide enough information about the claimed Dispute for the other Party to reasonably understand the:

- (a) alleged facts on which the Dispute is based;
- (b) legal basis on which the Dispute is made; and
- (c) relief that is claimed.

25.3 Without prejudice meetings

- (a) If the Dispute is not resolved within 5 Business Days of the Notice of Dispute, the Dispute must be referred to a manager of each Party to be discussed and the managers will endeavour to resolve the Dispute.
- (b) If the Dispute is not resolved between the managers within 7 Business Days of referral to the managers under clause 25.3(a), the Dispute will be referred to a general manager or the managing director (or delegates) of each Party to be discussed and the general manager or managing directors (or delegates) will endeavour to resolve the Dispute.
- (c) Unless otherwise agreed in writing, all communications at or in relation to these meetings are without prejudice and confidential.
- (d) Any agreement reached under this clause 25.3 must be in writing and signed by both Parties.

25.4 Litigation or referral to Expert

If a Dispute has not been resolved within 30 Business Days after the relevant Notice of Dispute was originally delivered or such further period as the Parties mutually agree, then:

- (a) the Parties may agree to refer the Dispute to an Expert for determination; or
- (b) either Party may issue proceedings to have the Dispute determined.

26 Independent Expert Dispute Resolution

26.1 Application

This clause 26 applies to any Dispute between the Parties that the Parties have referred to an Expert for determination, including Disputes:

- (a) as to the Availability Level of the Service;
- (b) as to whether the Service and/or Facility complies with the technical requirements of this Contract;
- (c) under clause 9; or
- (d) which the Parties agree to refer to expert determination in accordance with this clause 26.

26.2 Reference to Expert

- (a) Where a Dispute is referred for determination under this clause 26 (**Independent Expert Dispute**), either Party may serve a Notice on the other Party requiring the appointment of an independent expert.
- (b) The Parties must endeavour to agree upon the appointment of an Expert within 3 Business Days of the service of a Notice under clause 26.2(a), failing which the Expert will be appointed in accordance with the Expert Determination Rules of (and as published by) the Resolution Institute, current as at the date the Notice of Dispute is given (**Expert Determination Rules**).
- (c) Immediately upon the appointment of an Expert under clause 26.2(b), the Independent Expert Dispute will be referred to him or her.

26.3 Qualifications of Expert

An Expert (unless otherwise agreed in writing between the Parties):

- (a) must:
 - (i) have suitable and reasonable qualifications as well as commercial and practical experience in the area of the Dispute;
 - (ii) be independent of each Party and have no interest or duty which conflicts or may conflict with the Expert's function as an expert; and
- (b) must not:
 - (i) be a current or former officer or employee of a Party or a Related Body Corporate of a Party; nor

- (ii) at the time of appointment, have any financial relationship or other direct or indirect association with a Party which might jeopardise, or otherwise affect, the impartiality of an Expert.

26.4 **Referring Dispute to the Expert**

If the Parties agree to refer the Dispute to an Expert for determination:

- (a) the Parties must, within 5 Business Days after an Expert is selected:
 - (i) arrange for the Expert to be appointed; and
 - (ii) refer the Dispute to the Expert by written submissions setting out the Dispute to be determined as well as all other reasonably relevant matters; and
- (b) each Party must provide the Expert with any information reasonably required by the Expert.

26.5 **Presentation of evidence**

Each Party:

- (a) will be entitled to provide an Expert with any materials or evidence which that Party believes is relevant to the determination of an Independent Expert Dispute;
- (b) will make available to an Expert all materials requested by him or her, as well as all other materials which are relevant to his or her determination of an Independent Expert Dispute; and
- (c) may be represented by a legal representative (or any other person nominated by the Party) before an Expert.

26.6 **Conduct of Expert**

- (a) The Expert will:
 - (i) act as an expert and not as an arbitrator;
 - (ii) not be bound by the rules of evidence; and
 - (iii) have the power to inform himself or herself independently as to the facts to which an Independent Expert Dispute relates and to take such measures as he or she thinks fit to expedite the determination of such dispute.
- (b) The Parties:
 - (i) must procure that the Expert resolves the Dispute:
 - (A) consistent with the terms of this Contract;
 - (B) exercising the Expert's own skill, judgment and experience; and
 - (C) having regard to relevant standards or guidelines; and
 - (ii) agree that:
 - (A) except to the extent that doing so will be inconsistent with the remaining provisions of this clause 26, the determination and

resolution of the Independent Expert Dispute will be governed by the Expert Determination Rules; and

- (B) they must abide by the Expert Determination Rules and must procure the Expert's agreement to resolve the Dispute according to those rules.

26.7 **Expert to give decision**

The Parties must use their best efforts to ensure the Expert gives the Parties a written decision within 20 Business Days after the Dispute is referred to the Expert under clause 26.4.

26.8 **Expert's decision is final**

An Expert will make a determination on an Independent Expert Dispute and will determine what, if any, adjustments may be necessary between the Parties. Except to the extent otherwise required by Law, a determination by an Expert will be, in the absence of manifest error of fact or error of law, final and binding upon the Parties.

26.9 **Expert must give reasons**

The Expert must give written reasons for the decision.

26.10 **Parties to give effect to decision**

The Parties must give effect to the Expert's decision promptly.

26.11 **Legal Assistance**

Where an Expert has, under clause 26.8, made a determination which determination requires the drafting of amendments to this Contract, the Expert may retain a senior legal practitioner with at least 10 years' experience in energy or infrastructure law to assist the Expert with the drafting of those amendments.

26.12 **Costs**

Unless the Parties otherwise agree in writing:

- (a) each Party will bear its own expenses and costs incurred in connection with any expert determination process under this clause 26; and
- (b) the Expert will determine which Party will bear the costs of the determination (including, without limitation, the remuneration of the Expert and the costs of any legal practitioner engaged under clause 26.11), and in what proportion, having regard to the degree to which he or she considers that Party was at fault or, where applicable, that that Party was unreasonable in failing to agree to the matter under reference, and the Party so determined will bear those costs accordingly.

26.13 **Replacement of Expert**

- (a) If, prior to resolution of an Independent Expert Dispute, an Expert appointed under this clause 26 dies or is, due to some other cause (including illness, bankruptcy, or death or illness of a family member), unable to commence or to continue acting (or refuses to commence or to continue acting) in order to determine the Independent Expert Dispute, then the Parties must endeavour to agree upon the appointment of a new Expert within 3 Business Days of the service of Notice by a Party requiring the appointment of a replacement Expert.

- (b) If the Parties are unable to agree upon a replacement Expert within the time period specified in clause 26.13(a), then a new Expert will be appointed in accordance with the Resolution Institute Rules.
- (c) Immediately upon the appointment of a replacement Expert in accordance with clauses 26.13(a) or 26.13(b), the Independent Expert Dispute will be referred to that Expert.

26.14 Proceedings for urgent relief

Nothing in clause 25 or this clause 26 prevents proceedings being issued for urgent injunctive relief.

26.15 Continued performance of obligations

Notwithstanding the occurrence of a Dispute between the Parties, each Party must continue to comply with its obligations under this Contract in accordance with the terms of this Contract.

27 Notices

27.1 Requirements for Notices

Except as provided in clause 27.2, or where given under the electronic notices protocol in Schedule 7, a Notice must be:

- (a) in writing (which includes any electronic form capable of being reduced to paper writing by being printed); and
- (b) delivered or sent to the address of the addressee as specified in Schedule 2 by one or more of the following means:
 - (i) by hand delivery;
 - (ii) by priority post (airmail if posted to or from a place outside Australia);
 - (iii) by way of a courier service for hand delivery; or
 - (iv) electronically to the email address of the addressee.

27.2 Operational and urgent Notices

Where this Contract expressly provides:

- (a) and where the Parties agree in writing, Notices of a day-to-day operational nature; or
- (b) Notices given in an Emergency,

may be given orally and confirmed in writing, under the electronic notices protocol in Schedule 7, within five Business Days.

27.3 Notice takes effect

Subject to clause 27.4, a Notice takes effect from the later of:

- (a) the time it is received; and

- (b) any later time specified in the Notice.

27.4 Deemed receipt

For the purposes of this Contract:

- (a) a Notice delivered by hand to the address of a Party (including where a reputable courier service is used for that purpose) is deemed to be received if it is handed (with or without acknowledgment of delivery) to any person at the address who, in the reasonable judgment of the person making the delivery (upon making appropriate enquiries):
 - (i) appears to be; and
 - (ii) represents himself or herself as,
 - (iii) a representative of the Party to whom the Notice is addressed;
- (b) a Notice which is posted is deemed to be received by the Party to whom the Notice is addressed:
 - (i) 10 Business Days after the day of posting if the Notice is sent from outside the country of the address to which it is sent; and
 - (ii) 3 Business Days after the day of posting where it has been sent other than in accordance with 27.4(b)(i);
- (c) a Notice sent under the electronic notices protocol in Schedule 7 is deemed to be received by the Party as specified in the electronic notices protocol in Schedule 7.

27.5 Reliance on Notices

A Notice can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee reasonably believes it to be genuine, correct and authorised by the sender.

27.6 Communicating with AEMO

- (a) Where this Contract requires the Service Provider to provide a Notice to AEMO, that Notice must be given to AEMO in accordance with the communications requirements of the Power System Operation Procedure.
- (b) The Service Provider acknowledges that any notice or other communication given by AEMO to the Service Provider in connection with the Service will be given in accordance with the communications requirements of the Power System Operation Procedure.

28 General

28.1 Entire agreement

This Contract states all the express terms of the agreement between the Parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

28.2 Corporate restructuring of Western Power

If Western Power is restructured:

- (a) by Law; or
- (b) through other means, including the:
 - (i) use of subsidiary or associated companies; or
 - (ii) transfer of assets, rights and liabilities,

then the rights and obligations of Western Power under this Contract are Assigned to, and assumed by, the appropriate legal entity pursuant to the restructure.

28.3 **Assignment**

- (a) Subject to clause 28.3(d), rights arising out of or under this Contract are not assignable by a Party without the prior written consent of the other Party.
- (b) The Service Provider agrees and acknowledges that Western Power will not provide written approval to assign the Service Provider's rights under this Contract unless:
 - (i) the assignee is a Market Participant;
 - (ii) the registration of the Facility under the WEM Rules is transferred to the assignee;
 - (iii) Western Power is reasonably satisfied that the assignee has the technical and financial capabilities to perform the Service Provider's obligations under this Contract; and
 - (iv) if required by Western Power, the Service Provider and the proposed assignee enter into a deed of novation with Western Power on terms that are reasonably satisfactory to Western Power, under which the Third Party agrees to assume obligations that are substantially equivalent to the Service Provider's obligations under this Contract.
- (c) A breach of clause 28.3(a) by a Party is a Critical Default and clause 22.2(b) applies.
- (d) A restructure, transfer or Assignment under clause 28.2 does not require the Service Provider's prior written consent.
- (e) The Parties acknowledge that clause 28.3(a) is a prohibition on assignment and nothing in this clause 28.2 is to be construed as a mere promise by a Party not to assign without the other Party's consent.

28.4 **Ownership of the Facility**

The Service Provider may not deal with an ownership interest in the Facility without the written consent of Western Power, which consent is not to be unreasonably withheld or delayed. The conditions that Western Power may impose upon the grant of such consent include, but are not limited to, the person who is to acquire an ownership interest in the Facility acceding to this Contract or entering into a deed agreeing to be bound by nominated provisions of this Contract.

28.5 **No reliance**

The Service Provider has not relied on any statement by Western Power not expressly included in this Contract.

28.6 Consent of Western Power or AEMO

Whenever the Service Provider requires the consent or approval of Western Power or AEMO to do anything under or in respect of this Contract, Western Power or AEMO, as applicable, may withhold its consent or approval or give it conditionally or unconditionally in its absolute discretion unless expressly stated otherwise in this Contract. The Service Provider must comply with any conditions.

28.7 Prohibition, enforceability and severance

- (a) Any provision of, or the application of any provision of, this Contract or any right, power, authority, discretion or remedy which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) If any term or part of this Contract is, or becomes for any reason, invalid or unenforceable at Law, that term or part of this Contract is, and is hereby deemed to be, severed from this Contract without affecting the remainder of this Contract and this Contract continues to be valid and enforceable in all things.

28.8 Cumulative rights

The rights, powers, authorities, discretions and remedies arising out of or under this Contract are cumulative and do not exclude any other right, power, authority, discretion or remedy of any Party.

28.9 Variation

A variation of any term of this Contract must be in writing and signed by the Parties.

28.10 Further action to be taken at each Party's own expense

Each Party must do all things and execute all documents necessary to give full effect to its obligations under this Contract and the transactions contemplated by it, including the negotiation, preparation, execution and delivery of this Contract, at its own expense unless otherwise provided in this Contract.

28.11 Exercise of rights

- (a) A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.
- (b) A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or of any other right, power or remedy.
- (c) Failure by a Party to exercise, or a delay in exercising, a right, power or remedy does not prevent its exercise.

28.12 Counterparts

- (a) This Contract may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A Party may execute this Contract by signing any counterpart.

28.13 Civil Liability Act

Part 1F of the *Civil Liability Act 2002* (WA) does not apply to this Contract.

28.14 **Waiver**

- (a) Waiver of any requirement, right, power, authority, discretion or remedy arising under this Contract, including those arising upon default under this Contract, must be in writing and signed by the Party granting the waiver.
- (b) A failure or delay in the exercise, or partial exercise, of:
 - (i) a right arising from a breach of this Contract; or
 - (ii) a right, power, authority, discretion or remedy created or arising upon default under this Contract,does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) A Party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Contract or on a default under this Contract as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A full or partial waiver in respect of a breach of a term of this Contract is not a waiver in respect of further or other breaches of the same or any other term of this Contract.
- (e) This clause 28.14 may not itself be waived except by writing.

28.15 **Duty**

The Service Provider must pay the duty payable under the *Duties Act 2008 (WA)*, if any, on this Contract and any copies of this Contract and any other document in connection with this Contract.

28.16 **Governing law and jurisdiction**

- (a) This Contract, including the procedures in clause 25 and any Disputes, is governed by the law in force in Western Australia.
- (b) Each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Contract. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

29 Interpretation

29.1 **Capitalised Terms**

- (a) Subject to clause 29.1(b), capitalised terms used in this document:
 - (i) where defined in the Electricity Industry Act 2004, the WEM Regulations or the WEM Rules (as per definitions in Chapter 11 & Appendix 12), have the same meaning in this Contract unless the context requires otherwise; and
 - (ii) otherwise have the meaning set out in Schedule 1.
- (b) In the event of conflict between the definitions used in this Contract and those contained in the Electricity Industry Act 2004, the WEM Regulations or WEM Rules

(which conflict cannot be resolved by the context of the relevant definition as used in this Contract), then the order of precedence is to be, in the following order:

- (i) the Electricity Industry Act;
- (ii) the WEM Regulations;
- (iii) the WEM Rules; and
- (iv) this Contract.

29.2 **General**

In this Contract:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this Contract.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this Contract have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Authority as well as an individual.
- (f) A reference to a clause, Party, Schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Contract and a reference to this Contract includes any Schedule, attachment and exhibit.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of the legislation.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a 'day', 'month' and 'year' is a reference to a calendar day, calendar month and calendar year (respectively).
- (j) A reference to a Party includes that Party's successors and permitted assignees.
- (k) A promise on the part of two or more persons binds them jointly and severally.
- (l) A reference to an agreement other than this Contract includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (m) No provision of this Contract will be construed adversely to a Party because that Party was responsible for the preparation of this Contract or that provision.
- (n) A reference to a body, other than a Party (including an institute, association or authority), whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

29.3 **Interpretation of inclusive expressions**

Specifying anything in this Contract after the words 'include' or 'for example' or similar expressions does not limit what else is included.

29.4 **Business Day**

Where the day on or by which any payment is to be made is not a Business Day, that payment must be made on or by the next Business Day.

DRAFT

Executed as an agreement on the _____ day of _____ 20____ by:

EXECUTED for and on behalf of
**ELECTRICITY NETWORKS
CORPORATION**
ABN 18 540 492 861 in accordance
with sub-section 156(4) of the
Government Trading Enterprises Act
2023 (WA) :

Signature of Authorised Person

Full name of Authorised Person

Date

[Service Provider execution block (including a placeholder for the date of signing)]

Schedule 1 – Defined Terms

Term	Definition
Access Code	means the <i>Electricity Networks Access Code 2004 (WA)</i> .
Approval	means a certificate, licence, consent, permit, approval, authority or requirement of any Laws or any Authority.
Assign or assignment	includes: <ul style="list-style-type: none"> (a) to assign or Novate; or (b) An assignment or Novation, as relevant in the context.
Authority	means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia and includes any body, statutory or otherwise, charged with the administration of any Law.
Available	means the Service is available to be provided by the Service Provider from the Facility when dispatched by AEMO in accordance with the terms of this Contract.
Availability Level	is the measurement of Availability of the Service for each month during the Service Term (as a %), as calculated in accordance with Schedule 4 (Services Schedule).
Business Day	means a day on which banks are open for general banking business in Perth, Western Australia excluding a Saturday, Sunday or public holiday.
Breach Notice	means a Notice from one Party to the other Party containing the information specified at clause 22.1(b).
Capacity Credit Value (CCV)	has the meaning given to in Item 1.3 of Schedule 5 (Fees).
Change in Law	means any change in existing Laws or introduction of new Laws.
Claim	means a demand, action or proceeding of any nature whether actual or threatened.
Code	means the Electricity Networks Access Code 2004.
Conditions Precedent	means the conditions precedent specified in Schedule 3 (Conditions Precedent).
Conditions Precedent Satisfaction Date	means the date specified as such in Schedule 3 (Conditions Precedent).
Confidential Information	means the terms of this Contract, and all information regardless of its form:

	<p>(a) which is disclosed directly or indirectly by a Party to the other Party with respect to or in connection with the Service or this Contract (whether before the date of this Contract or during the Contract Term); and</p> <p>(b) which is treated or designated as confidential by the disclosing Party or the receiving Party knows, or ought to know is confidential,</p> <p>and includes the following types of information:</p> <p>(c) all trade and business secrets of the disclosing Party;</p> <p>(d) information concerning clients of the disclosing Party and any Related Body Corporate including all mailing lists and lists of clients;</p> <p>(e) information concerning officers and employees of the disclosing Party; and</p> <p>(f) any information of a commercial, operational, marketing, business, technical or financial nature relating to the affairs of the disclosing Party.</p>
Connection Contract	means the contract under which Western Power agrees to permit the Facility to connect to the Network and (if different) any contract under which Western Power agrees to provide entry and/or exit services in respect of the Facility.
Consequential Loss	means each of the following: <p>(a) loss of (or loss of anticipated) opportunity, use, production, revenue, income, profits, business and savings;</p> <p>(b) loss due to business interruption;</p> <p>(c) punitive or exemplary damages.</p>
Contract	means this agreement for the performance of the Service between the Service Provider and Western Power.
Contract Details	means the details set out in Schedule 2 (Contract Details).
Contract Term	has the meaning given in clause 1.1(a).
Contract Value	means the amount specified as such in Schedule 2 (Contract Details).
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
CPI or Consumer Price Index	means the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities published by the Australian Bureau of Statistics from time to time or, if the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities ceases to be published, such alternative index as Western Power acting reasonably and in good faith may determine, and in all cases the CPI figure is to be adjusted to correct for any effects of a change in the rate of GST.

Critical Default	means a breach that has not been remedied within the time specified in clause 22.1 or any other circumstance that is deemed to be a Critical Default under this Contract.
Dispute	means any dispute, difference or issue between the Parties concerning or arising out of or in connection with or relation to this Contract or the subject matter of this Contract or the existence, breach, termination, validity, repudiation, rectification, frustration, operation or interpretation of this Contract.
Economic Regulatory Authority	means the Economic Regulation Authority established under the <i>Economic Regulation Authority Act 2003 (WA)</i> .
NC	means North Country.
NC Island	means the remaining portions of the Western Power network (including all downstream electrical infrastructure) emanating from Rangeway, Chapman and Geraldton substations following: <ul style="list-style-type: none"> (a) a planned event (including pre-outage preparations) resulting in the islanding of the NC network; or (b) an unplanned event resulting in the islanding of the NC network.
Electricity Review Board	means the Western Australian Electricity Review Board established under the <i>Energy Arbitration and Review Act 1998 (WA)</i> .
End Date	means the date that is the earlier of 0800 hours on the date: <ul style="list-style-type: none"> (c) identified as the “End Date” in Schedule 2 (Contract Details); and (d) on which this Contract is terminated in accordance with its terms.
Emergency	means any accident, emergency, potential danger or other unavoidable cause or extraordinary circumstance.
Equipment	means, in respect of the Facility, the fixtures, fittings, plant, equipment, software and Intellectual Property and all other items used by the Service Provider to provide the Service from the Facility to the standard required by this Contract.
Execution Date	means the date this Contract is executed by the last Party to execute it.
Extension Period	means the period, if any, so described in the Contract Details.
Expert	is a person having the qualifications set out in clause 26.3 that is appointed by the Parties in accordance with clause 26.4.
Expert Determination Rules	has the meaning given in clause 26.6(b)(ii)(A).
Facility	means the facility or facilities specified in Schedule 2 (Contract Details).and includes all of the Equipment in respect of that Facility.

Fees	means the fees, including the Monthly Fee, calculated in accordance with Schedule 5.
Final Condition Precedent Satisfaction Date	means the final condition precedent satisfaction date specified in Schedule 2 (Contract Details).
Fixed Price	has the meaning given to it in Item 1.1 of Schedule 5 (Fees).
Force Majeure Event	<p>means in respect of a Party, an event or circumstance beyond the Party's control, and which the Party, acting in accordance with Good Electricity Industry Practice, is not able to prevent or overcome, including (where the foregoing conditions are satisfied):</p> <ul style="list-style-type: none"> (a) any act of God, lightning, earthquake, storm, fire, flood, subsidence, land slide, mud slide, wash-out, explosion or natural disaster; (b) any insurrection, revolution or civil disorder, terrorism, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot; (c) subject to paragraph (i) of this definition, an epidemic, pandemic or quarantine; (d) any act or omission of government or any government or regulatory department, body, instrumentality, ministry, agency, fire brigade or any other authority other than a Party (including restraint, expropriation, prohibition, intervention, direction or embargo); (e) any inability or delay in obtaining any governmental, quasi-governmental or regulatory approval, consent, permit, licence or any other authority; or (f) any industrial disputes of any kind, strike, lock-out, ban, limitation or other industrial disturbances, <p>but does not include:</p> <ul style="list-style-type: none"> (g) a failure or breakdown of the Facility unless caused by an event external to the Facility; (h) any occurrence which results from the wrongful or negligent act or omission of the Affected Party or the failure by the Affected Party to act in a prudent and proper manner and in accordance with Good Electricity Industry Practice; (i) an event or circumstance where the event or circumstance or its effects on the Affected Party or the resulting inability of the Affected Party to perform its obligations could have been prevented, overcome or remedied by the exercise by the Affected Party of the standard of care and diligence consistent with that of a reasonable and prudent person; (j) strikes or industrial action by the Service Provider's Personnel; or

	(k) normal weather conditions for the time of year according to the Australian Bureau of Meteorology.
Form of Security	means the document set out in Schedule 9 (Form of Security).
GEIP or Good Electricity Industry Practice	has the meaning given to the term "good electricity industry practice" in the <i>Electricity Networks Access Code 2004</i> (WA).
Government Agency	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia.
GST	means goods and services tax or similar value added tax levied or imposed in Australia on a taxable supply under the GST Act.
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Independent Expert Dispute	has the meaning given in clause 26.2(a).
Insolvency Event	<p>in respect of a person, means any one or more of the following:</p> <ul style="list-style-type: none"> (a) the person is insolvent within the meaning of section 95A of the Corporations Act; (b) any execution or other process of any court or authority being issued against or levied upon any material part of that person's property or assets; (c) a petition or application being presented (and not being withdrawn within 10 Business Days) or an order being made or a resolution being passed for the winding up or dissolution without winding up of that person otherwise than for the purpose of reconstruction or amalgamation under a solvent scheme; (d) a receiver or a receiver and manager of the undertaking or any material part thereof of that person being appointed; (e) that person proposing to enter into or enters into any arrangement, reconstruction or composition with or for the benefit of its creditors; (f) an administrator of that person being appointed or the board of directors of that person passing a resolution to the effect that is specified in section 436A(1) of the Corporations Act; (g) that person failing (as defined by section 459F of the Corporations Act) to comply with a statutory demand; (h) a controller (as defined in the Corporations Act) being appointed in respect of that person or the whole or a material part of that person's undertaking, property or assets; (i) an application being made to a court for an order in respect of that person under part 2F.1 of the Corporations Act;

	<p>(j) an event referred to in section 459C(2) of the Corporations Act occurring in respect of that person; or</p> <p>(k) anything analogous or having a substantially similar effect to any of the events specified above occurring under the Law of any applicable jurisdiction.</p>
Intellectual Property or IP	means all intellectual and industrial property rights, including trade marks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, and other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation dated 14 July 1967 (as amended from time to time), including any application or right to apply for registration of any of these rights.
Invoice	an invoice given by the Service Provider to Western Power in accordance with clause 8.2.
Key Performance Indicators	Means the key performance indicators set out in Schedule 8.
kV	means kilo Volt.
Law	means “written laws” and “statutory instruments” as defined in the Code, the WEM Rules, orders given or made under a written law or statutory instrument as so defined or by a government agency or authority, Codes of Practice and Australian Standards deemed applicable under a written law and rules of the general law including the common law and equity.
Legislative Requirements	includes Laws, Approvals and the fees and charges payable with respect to these.
Loss	<p>means:</p> <p>(e) any liability, cost, expense, loss, personal injury (including illness), death or damage;</p> <p>(f) fine, penalty or contingent payment (howsoever described) under any Legislative Requirement; and</p> <p>in relation to a Claim, Loss includes amounts payable on the Claim and (whether or not the Claim is successful), legal costs and disbursements on a full indemnity basis.</p>
Monthly Fee	is calculated in accordance with item 1 of Schedule 5 (Fees).
Minimum Performance Level	means the amount so described in Schedule 2 (Contract Details) (as a %), being the minimum amount of required Availability of the Services in a relevant month.
Monthly Variable Fee	is calculated in accordance with item 1.2 of Schedule 5 (Fees).
MU	means Muja.
MVA	means Mega Volt-Ampere.
MVAh	means Mega Volt-Ampere hour.
MW	means Mega Watt.

MWh	means Mega Watt Hour.
NCESS Operating Protocol	has the meaning given in clause 4.7(a).
Network	has the same meaning given to the term 'Western Power Network' in the Code.
Notice	means a notice, approval, consent or other communication given or made under this Contract, provided in accordance with the terms of this Contract.
Notice of Dispute	has the meaning given in clause 25.1.
Novate or Novation	<p>means to substitute, with the consent of all Parties to this Contract and with effect on and from a date nominated as the effective date of the novation, an assignee for the Service Provider as a party to this Contract, with the result that:</p> <ul style="list-style-type: none"> (a) all rights and obligations of the Service Provider under this Contract become rights and obligations of the assignee as if the assignee had been named in the Contract in place of the Service Provider; and (b) the Service Provider is released from any obligations under this Contract arising on or after the effective date of the novation, but remains liable for any default by it in the performance of those obligations prior to the effective date of the novation.
Online Payment Platform	means SAP Ariba, or another online payment platform as notified by Western Power to the Service Provider from time to time in writing.
Operating Parameters	means the parameters listed in item 3.5 (with respect to Reliability Services) and item 4.6 (with respect to System Strength Services) of Schedule 4 (Service Schedule).
Operating Protocol	means a written record agreed by the Parties of the operational processes related to delivering the Service set out in Schedule 4 (Services Schedule) (if any).
P Number	means the number as specified in Schedule 2 (Contract Details).
Party	means a party to this Contract.
Personnel	means with respect to a Party, its officers, employees, delegates, contractors, Subcontractors, partners, agents and service providers of any nature (but excludes the other Party in its role as counterparty to this Contract).
Possession	includes custody, control, and an immediate right to possession, custody, or control.
Power System Operation Procedure	means the Power System Operation Procedures as published by AEMO.

Power System Security	has the meaning defined in the ESM Rules.
Records	has the meaning given in clause 17.1.
Related Body Corporate	has the meaning given to the term in section 9 of the Corporations Act.
Reliability Service	means a service (measured in MW of response capability, in a quantity up to the Service Quantity) to minimise power supply disruption during planned and unplanned network outage events impacting the NC. The requirements of this service are detailed in Schedule 4 (Services Schedule).
Reporting Period	[insert]
Representative	in relation to a Party, means any officer, employee, agent, adviser, trustee, permitted assignee, liquidator, administrator, or Third Party contractor of that Party.
Required Availability Percentage	means the amount so described in Schedule 2 (Contract Details) (as a %), being the minimum amount of required Availability of the Services in a relevant month. .
Expert Determination Rules	means the Expert Determination Rules of the Resolution Institute described in clause 26.6(b)(ii)(A).
SCADA	means Supervisory Control and Data Acquisition.
Scheduled Maintenance	Scheduled Maintenance means planned maintenance and repair of the Facility which, in accordance with Good Electricity Industry Practice, is undertaken at scheduled intervals or otherwise during planned outages of the Facility.
Scheduled Maintenance Plan	Scheduled Maintenance Plan means a plan developed in accordance with clause 4.2.
Security	means an unconditional and irrevocable undertaking provided as security in a form and on terms that complies with the provisions of clause 14.2.
Security Amount	the amount stated as such in Schedule 2 (Contract Details).
Security Provider	a financial institution or insurance company which: <ul style="list-style-type: none"> (a) is registered and conducting business in Australia, with a local branch in Western Australia; (b) is regulated by the Australian Prudential Regulation Authority; and (c) has a level of credit rating that is acceptable to Western Power.
Security Invalidation Event	means one of the following: <ul style="list-style-type: none"> (a) the issuer of a Security ceases to be a Security Provider; (b) the issuer of a Security is subject to an Insolvency Event;

	<ul style="list-style-type: none"> (c) the issuer of a Security repudiates its obligations under the Security; (d) the issuer of a Security claims that the Security is no longer valid and binding; or (e) for any other reason a Security ceases to be valid and binding.
Service	refers to either or both of the Reliability Service or the System Strength Service , that is indicated as being provided by the Service Provider in Schedule 2 (Contract Details).
Service Location	means the location of the Facility as specified in Schedule 2 (Contract Details).
Service Provider Licensed IP	means Intellectual Property licensed by the Service Provider from a Third Party, and which the Service Provider is entitled to exercise and sublicense, which are embodied in, attached to or otherwise relate to the Service.
Service Provider Owned IP	means Intellectual Property: <ul style="list-style-type: none"> (a) owned by the Service Provider prior to the commencement of the Service or which did not come into existence by reason of the provision of the Service; (b) in subject matter developed by the Service Provider in the provision of the Service or otherwise however under this Contract; and (c) which the Service Provider is entitled to exercise and sublicense, which are embodied in, attached to or otherwise relate to the Service.
Service Quantity	means the quantity of the Service that the Service Provider is required to provide under this Contract, as specified in Schedule 2 (Contract Details), being, at maximum, the quantity remaining following the loss of the single largest unit, either: <ul style="list-style-type: none"> (a) within a single “facility” as defined in the WEM Rules (i.e. redundancy achieved at an individual site), or (b) across several “facilities” as defined in the WEM Rules (i.e. redundancy achieved when considering the collective capacity offered across multiple locations).
Services Schedule	means Schedule 4.
Service Term	means the period of time commencing on the Start Date and ending on the End Date (as extended by the Extension Period, if applicable).
Service Year	means in respect of the Service Term: <ul style="list-style-type: none"> (a) each period of 12 calendar months commencing at 0800 hours on the Start Date; provided that (b) the last Service Year will be for a period commencing at 0800 hours on the day that is immediately following the end of the

	preceding Service Year, and ending at 0800 hours on the End Date.
Start Date	means the date specified as such in Schedule 2 (Contract Details).
Subcontractor	means anyone, other than an employee of the Service Provider, with whom the Service Provider enters into a contract under which that person will perform part of the activities involved in undertaking the Services for the Service Provider.
System Strength Service	means a service (measured in MVA of available fault level, in a quantity up to the Service Quantity) to maintain voltage stability, power quality obligations and sufficiently high fault levels for intact network conditions, or as a result of planned or unplanned outages. The requirements of this service are detailed in Schedule 4 (Services Schedule).
SWIS	means Western Power's South West Interconnected System.
Technical Rules or TR	the technical rules or technical code applying from time to time to the SWIS under Chapter 12 of the Access Code, as modified in accordance with the Access Code.
Test	means the testing requirements with respect to the Service, including: <ul style="list-style-type: none"> (a) tests that Western Power, AEMO or the Service Provider consider are required; (b) all things incidental to a test; and (c) all things which are necessary to conduct a test.
Third Party	a person not being Western Power, the Service Provider, or a director, officer or employee of Western Power or the Service Provider, but is deemed to include AEMO.
Unavailable	means the Service is not Available (including, but not limited to, deemed unavailability in accordance with clauses 4.3(a) and 7.6).
Unavailability Termination Event	has the meaning specified in Schedule 2 (Contract Details).
Unscheduled Maintenance	means repair or maintenance which must either be undertaken on the Facility immediately to preserve its safety and operational integrity or which otherwise cannot, consistently with Good Electricity Industry Practice, be deferred until the next time at which Scheduled Maintenance is to be undertaken on the Facility in accordance with a Scheduled Maintenance Plan.
WEM Rules	means the 'market rules' referred to in section 123(1) of the Electricity Industry Act 2004, and includes all rules, policies or other subordinate documents developed under the WEM Rules.
WEM Regulations	means the <i>Electricity Industry (Wholesale Electricity Market) Regulations 2004</i> .
TS	means Three Springs Terminal.

Western Power Property	means the fixtures, fittings, plant, equipment and all other items owned by Western Power that are used by Western Power in connection with the Service.
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Schedule 2 – Contract Details

Start Date	The later of: (a) 1 October 2028 ; and (b) the date in which all Conditions Precedent are satisfied (as notified by Western Power in accordance with clause 2.3(c)), which date must be no later than the Final Condition Precedent Satisfaction Date.
End Date	10 years from Start Date
Extension Period	5, 10, or 15 years from the End Date
Final Condition Precedent Satisfaction Date	1 October 2029
Western Power details	Name: Electricity Networks Corporation trading as Western Power ABN: 18 540 492 861 Address: 363 Wellington Street, Perth WA 6000 Email address: [TBC]
Service Provider details	[Insert: Name: Address: [Note: registered office (including 'trustee' details, if applicable)] ACN: ABN: Confirmation of GST Registration: Place of incorporation: Principal office: Postal address: Email address:]
Facility Details	[TBC]
Description of Facility	[TBC]
Service Location	[TBC] [Note: Services are required to be connected to the SWIS within the NC region in reasonable proximity to the existing Geraldton (GTN) substation – See schedule 4]

Service to be provided	<input type="checkbox"/> Reliability Service <input type="checkbox"/> System Service Strength
Service Quantity	<input type="checkbox"/> With respect to the provision of a Reliability Service: [TBC] MW [Note: An NCESS Submission for the provision of a Reliability Service must specify a Service Quantity of up to 125 MW. If a Reliability Service is not offered, the Service Quantity must be specified as 0 MW.] <input type="checkbox"/> With respect to the provision of a System Strength Service: [TBC] MVA [Note: An NCESS Submission for the provision of a System Service Strength must specify a Service Quantity of up to 1,000 MVA. If a System Strength Service is not offered, the Service Quantity must be specified as 0 MVA.]
Required Availability Percentage	≥95% [Note: higher availability requirements are preferred e.g. 95%]
Contract Value	\$(TBC)
Security Required	Yes
Security Amount	10% of Contract Value
Unavailability Termination Event	<p>[means the occurrence of any of the following:</p> <p>(a) as at any given day, the Service has been Unavailable in more than 10% of Dispatch Intervals in the Service Term in the preceding 90 days during the Service Term (excluding any period during which a Force Majeure Event applies); or</p> <p>(b) the Service is Unavailable for a continuous period of more than 30 days during the Service Term (excluding any period during which a Force Majeure Event applies).]</p> <p>[Note: particulars of Unavailability Termination Events to be inserted].</p>
Western Power bank account	[Insert: Account Name Bank name: City: Branch: BSB No: Account No:]
Service Provider bank account	[Insert: Account Name

	Bank name: City: Branch: BSB No: Account No:]
P Number	[insert]

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Schedule 3 – Conditions Precedent

1 Condition Precedent Dates

No	Condition Precedent	Responsible Party	Condition Precedent Satisfaction Date
1	Western Power has received funding approval for this Contract.	Western Power	TBC
2	The Equipment has completed all tests required by Western Power (to Western Power's satisfaction) to demonstrate compliance with the Service requirements specified in this Contract.	Service Provider	TBC
3	The Service Provider has entered into a Connection Contract.	Service Provider	TBC
4	Each Service has been issued an Interim Approval to Generate Notification or an Approval to Generate Notification in accordance with the WEM Rules.	Service Provider	TBC
5	The Service Provider and the Facility have met all requirements under the WEM Rules to entitle the Service Provider to provide the Services.	Service Provider	TBC
6	Each Service has been issued an Interim Approval to Operate or an Approval to Operate in accordance with the WEM Rules.	Service Provider	TBC
7	Division 3A — Temporary reliability standards for supply to particular areas of the <i>Electricity Industry (Network Quality and Reliability of Supply) Code 2005 (WA)</i> has been amended to increase the minimum reliability standards for North Country load.	Western Power	TBC
8	The Service Provider has provided Western Power the proposed Scheduled Maintenance Plan for a one period commencing on the Start Date and the parties have agreed a Scheduled Maintenance Plan for that Service Year, in accordance with the process set out in clause 4.2).	Service Provider	TBC

9	Provision of Security in accordance with clause 14.	Service Provider	TBC
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2 Progress Report

The Service Provider must provide the following information (with supporting evidence) at least every month from the Execution Date of this Contract until the Start Date (or termination under clause 2.5 if applicable):

- (a) when all Approvals will be finalised;
- (b) when site preparation will begin;
- (c) when construction will commence;
- (d) when Equipment will be installed and when all required control Equipment will be in place;
- (e) when the Equipment, or part of the Equipment, will be ready to undertake Commissioning Tests;
- (f) when the Equipment, or part of the Equipment, will have completed all Commissioning Tests; and
- (g) achievement of any other key milestones associated with project implementation

Schedule 4 – Services Schedule

1 Availability Level

For the purpose of determining whether the Availability Level has met or surpassed the Required Availability Percentage for a Service Year, the Availability Level for a Service Year shall be determined in accordance with this Item 1, Schedule 4.

$$\text{Availability Level} = 1 - (DQ_n / DQ_e)$$

Where:

DQ_n = the aggregate quantity of Reliability Service (measured in MWh) or System Strength Service (measured in MVAh) that is Unavailable to AEMO or Western Power, as relevant during a Service Year, determined as at the end of that Service Year.

DQ_e = the aggregate capacity of Reliability Service (measured in MWh) or System Strength Service (measured in MVAh), during a Service Year, as at the end of that Service Year.

2 Connection of the Facility

- (a) The Facility is required to be connected to the SWIS within the **NC** region in reasonable proximity to the existing **GTN** substation.
- (b) The Service, Equipment and Facility is required to have the appropriate sensors and protection systems installed to comply with relevant sections of the Technical Rules, in particular Section 3.3.3.8 and 3.5; and
- (c) All document and drawings related to the connection of the Facility is required to be available for provision to Western Power upon request, including but not limited to:
 - (i) specification sheets for the Services;
 - (ii) general arrangement and schematic diagrams for the Service; and
 - (iii) an adequate and accurate computer model of each Service;
- (d) The NCESS SCADA system is required to provide:
 - (i) Western Power with a 24-hour online monitoring system via a reliable telecommunication system to all generators; and
 - (ii) at least two (2) independent telecommunication systems between Western Power and the Service Provider to communicate with Western Power's systems.

3 Reliability Service Requirements

3.1 Application

If the Contract Details indicate that the Service Provider will be providing a Reliability Service (as a Service), then this Item 3 applies with respect to the Contract.

3.2 Expected technical capability

- (a) Reliability Services offered must provide adequate redundancy for both primary equipment (units producing the MW/MVA quantity) and secondary equipment (such as protection, communications and auxiliary supplies). Redundancy for the maximum Service Quantity may be considered as a collective across multiple facilities (where applicable) – see definition of “Service Quantity”.
- (b) The Service Provider must ensure the Equipment is capable of the following:
 - (i) synchronising and be capable of achieving its ramp rate (specified under clause 3.3.3.5 of the Technical Rules and Appendix 12.5 of the WEM Rules of Injection or Withdrawal within 15 minutes of receiving a Dispatch Instruction from AEMO;
 - (ii) complying with the terms of the Service Provider connection agreement, including any obligation(s) to comply with the Technical Rules (TR) and/or WEM Rules;
 - (iii) providing Active Power Capability that meets the required Service Quantity at local temperature conditions as specified in the TR or WEM Rules as applicable;
 - (iv) providing stable operation under normal operating conditions and during isochronous operation;
 - (v) providing SCADA and duplicate protection / telecommunication systems to enable remote monitoring, emergency control (including remote resetting) and communication between AEMO, Western Power and the Service;
 - (vi) allowing remote start functionality for all System Restart Services, such that they can be connected to a dead bus at full speed with no load within 15 minutes of AEMO issuing a System Restart Service start-up command;
 - (vii) ability to operate in stable condition with no load to energise transmission and distribution networks as necessary; and
 - (viii) running the System Restart service automatically to supply the auxiliary system upon detecting a total loss of supply to enable the restart process.
- (c) If the Service Provider is offering a demand side management service, the technical requirements of this Service Schedule that relate exclusively to energy producing systems are not applicable.

3.3 **Maximum Service Quantity**

The maximum quantity of the Reliability Service required is the Service Quantity.

3.4 **Utilisation**

- (a) The Reliability Service may be called upon at any time at Western Power’s discretion (i.e. in response to an outage of the 132kV transmission lines connecting the NC with the SWIS, as well as for pre-emptive operator action to deliberately form an NC island), including to provide:
 - (i) Base load coverage: Operating continuously over the 4-week period (up to the Service Quantity), with a maximum offering under this category of 90 MW.

- (ii) Peak demand coverage: Available for a minimum of 4 (continuous) hours between 2:00 pm and 10:00 pm each day over the 4-week period, with a maximum offering under this category of 35 MW.
- (b) The Service Provider must:
 - (i) make the Reliability Service Available at any time during the contracted period, within the Availability Parameters;
 - (ii) provide coverage for a continuous outage duration of up to four (4) weeks (up to their Service Quantity); and
 - (iii) provide evidence of the equipment's capability to meet the utilisation requirements specified at Item 3.4(a).

3.5 **Availability Parameters**

The aggregate energy measured in MWhr during a Service Year, determined as at the end of that Service Year.

3.6 **Operating Parameters**

- (a) The Reliability Service is required to provide capacity to supply customers in the NC under conditions where additional local generation is required to maintain system reliability, including :
 - (i) Islanded operation where there is a physical disconnection between the NC transmission network and the remainder of the SWIS, resulting in the formation of a NC island. This may occur:
 - (A) in a planned manner - i.e. operational intervention (including pre-outage preparations) to reduce power transfer between the NC and the SWIS, followed by deliberate disconnection of this line to form the NC Island; and
 - (B) in an unplanned manner - i.e. following the loss of the 132kV lines between the NC and the SWIS (due to faults or any other unexpected triggers), resulting in the total loss of supply to the NC region.
 - (ii) Parallel operation where the NC remains connected to the SWIS, and the Reliability Service is activated to support Network Operations management of the SWIS for unplanned events or planned works that affect Power System Security in the NC.
- (b) If a System Restart procedure is initiated (following the total loss of supply to the NC), the Service Provider may be called upon for one of the following functions:
 - (i) primary startup function (i.e. the first unit to be energised, operating in isochronous mode with no load initially followed by the gradual restoration of power to loads that are essential to the subsequent System Restart steps); and
 - (ii) secondary startup function (i.e. following the formation of the initial NC Island with stable voltage & frequency, additional units will be called upon to provide further capacity to enable the staged restoration of all remaining loads within the NC).

4 System Strength Service Requirements

4.1 Application

If the Contract Details indicate that the Service Provider will be providing a System Strength Service (as a Service), then this Item 4 applies with respect to the Contract.

4.2 Expected technical capability

The System Strength Service is measured as fault level contribution (in MVA) measured at the **Three Springs (TS) 132 kV** bus, for the purposes of, but not limited to:

- (a) maintaining voltage stability (avoid excessive step-change disturbances);
- (b) increasing fault levels in weak parts of the network; in turn, ensuring protection equipment operates correctly (adequate clearance times and appropriate coordination); and
- (c) avoiding unstable operation of inverter-based resources and generator control systems (alleviating risk of unstable operation, power oscillations, etc.).

4.3 Maximum Service Quantity

The maximum quantity of the System Strength Service required is the Service Quantity.

4.4 Utilisation

The Service Provider must provide:

- (a) the System Strength Service from Facility under any and all system conditions, as directed by AEMO; and
- (b) evidence of the Equipment's capability to meet the utilisation requirements specified at Item 3.4(a).

4.5 Availability Parameters

N/A (i.e. the System Strength Service can be called upon under any system conditions).

4.6 Operating Parameters

There are no specific operational requirements / limitations associated with the System Strength Service (i.e. the System Strength Service can be called upon under any system conditions).

Schedule 5– Calculation of Fees

1 Monthly Fee

The Monthly Fee for a Month is the aggregate of the Monthly Variable Fee for the Month for the Facility plus the Fixed Price calculated in accordance with this Schedule.

$$TMF = FP_n + MVF - CCV - ARA$$

Where:

- FP_n = the Fixed Price applicable to the relevant Month (expressed in \$/month);
- MVF = the Monthly Variable Fee for the Month for the Facility (expressed in \$);
- CCV = the value of the expected Capacity Credit (**Capacity Credit Value**) payments to be paid to the Service Supplier with respect to the Facility for the relevant Month, as advised to Western Power by AEMO under clause 5.3.1(b) of the WEM Rules (expressed in \$);
- ARA = the Annual Reconciliation Amount, with respect to the first Invoice to be issued (in accordance with this Contract) in a Service Year, for the Service Year immediately prior.

1.1 Fixed Price

Where:

For each Month of a Quarter during the period commencing at 8:00am on the Start Date and ending at the end of the Trading Day ending at 8:00 am on the End Date, the fixed price (FP_n) is to be calculated prior to the commencement of each relevant Quarter in accordance with the following formula:

$$FP_n = \left[1 + \left(\frac{CPI_{(n-2)} - CPI_b}{CPI_b} \right) \right]$$

Where:

- FP_n = is the monthly fixed price in Quarter n
- $CPI_{(n-2)}$ = is the CPI published for the Quarter commencing 6 months prior to the start of the Quarter n, provided that if $CPI_{(n-2)}$ is less than CPI_b or the CPI for the Quarter immediately prior to Quarter $_{(n-2)}$, then $CPI_{(n-2)}$ will be deemed to be equal to the greater of CPI_b and the CPI for the Quarter immediately prior to Quarter $_{(n-2)}$;
- CPI_b = is 134.8, being the Perth CPI published for the Quarter ending 30 June 2024 and
- n = is the number of the relevant Quarter with Quarter 1 being the Quarter in the Start Date occurred.

1.2 **Monthly Variable Fee**

Where:

The **Monthly Variable Fee** for a Month for the Facility is calculated in accordance with the following formula:

$$MVF = MOF + FEE$$

Where:

MVF = the Monthly Variable Fee for the Month for the Facility (expressed in \$);

MOF = the sum of the Trading Interval Variable Fees (**TIVF**) for the Facility for each Trading Interval in the relevant Month.

FEE = Any fees or charges associated with operating the Facility incurred by the Service Provider in accordance with a regulatory regime associated with operating the Facility.

Where:

TIVF is the trading interval variable fee for each Month of a Quarter for the Facility and is calculated proceeding the conclusion of each relevant Trading Interval in accordance with the following formula.

$$TIVF = Meter \times \left\{ \left\{ EP_b \times \left[1 + \left(\frac{CPI_{(n-2)} - CPI_b}{CPI_b} \right) \right] - (BP \times LF) \right\} \times Test + GF \right\}$$

Where:

Meter = the electricity, measured in MWh, produced by the Facility in the relevant Trading Interval relating to dispatch to provide the Service.

EP_b = is the base energy price in June 2024 dollars

MCP = (or Market Clearing Price) is the Final Reference Trading Price as published by AEMO for the relevant Trading Interval, measured in \$/MWh.

LF = is the Transmission Loss Factor applicable to the facility.

CPI_(n-2) = is the CPI published for the Quarter commencing 6 months prior to the start of the Quarter n, provided that if CPI_(n-2) is less than CPI_b or the CPI for the Quarter immediately prior to Quarter_(n-2), then CPI_(n-2) will be deemed to be equal to the greater of CPI_b and the CPI for the Quarter immediately prior to Quarter_(n-2);

CPI_b = is [134.8], being the Perth CPI published for the Quarter ending 30 June 2024 and

n = is the number of the relevant Quarter with Quarter 1 being the Quarter commencing on the first day in the Quarter in which the Start Date occurs.

Test = 1

GF = is the Generating Fee and is equal to \$/MWh and includes:

- (a) market fee rate of \$/MWh;
- (b) regulator fee rate of \$/MWh;
- (c) system operation fee rate of \$/MWh;
- (d) EPWA Coordinator Fee of \$/MWh; and
- (e) Contingency Reserve Raise availability cost of \$/MWh.

1.3 **Capacity Credit Value**

Where:

The **Capacity Credit Value** for a Month for the Facility is calculated in accordance with the following formula:

$$CCV = ECCP/12$$

Where:

ECCP = the total amount of expected Capacity Credit payments to be paid to the Service Provider in respect of the Facility (if any) for the relevant Capacity Year as notified by AEMO to Western Power in accordance with the Rules.

1.4 **Annual Reconciliation Amount**

Where the Availability Level for a Service Year is less than 95%, an Annual Reconciliation Amount will be included in the first monthly Invoice for a Service Year (with respect to the Service Year immediately prior), and such amount shall be calculated in accordance with the following formula:

$$ARA = (1 - FP_{Avail}) \times FP_{Annual}$$

Where:

FP_{Avail} =

Availability level	FP_{Avail}
95%-100%	1
90%-94.99%	0.9
80%-89.99%	0.8
70 - 79.99%	0.7
<69.99%	0

FP_{Annual} = the sum of all FP_n (as defined in Item 1.1 of this Schedule 5, being the monthly fixed price paid by Western Power during the relevant Service Year).

Schedule 6 – Insurance Policies

Industrial Special Risk	
Scope of Cover	The Service provider must (at its own cost) insure the Facility against: <ul style="list-style-type: none"> (a) material loss or damage (b) mechanical and electrical breakdown; and (c) boiler and pressure vessel explosion
Sum insured	For a replacement value on a per event basis of no less than \$25 million
Insured	The insurance must be in the name of the Service Provider.

Public and Product Liability Insurance	
Scope of cover	Insurance against any Claim in respect of: <ul style="list-style-type: none"> (a) loss or destruction of, or injury or damage to, or loss of use of any real or personal property; or (b) any personal injury to or death of any person, arising out of, or caused by: (c) the performance or non-performance of the Services by the Contractor or its Subcontractors or agent or employee of the Contractor or its Subcontractors; or (d) the quality, disposal or sale of products used by the Contractor in the performance of the Services. <p>The policy must be endorsed to extend to include liability arising out of the use of unregistered motor vehicles.</p>
Sum insured	With respect to Public Liability Insurance, provide cover to an amount of \$50 million in respect of any one Claim and unlimited as to the number of Claims. With respect to Product Liability Insurance, provide cover to an amount of \$50 million in respect of any one Claim and in the aggregate per annum.
Insured	The insurance must be in the name of the Service Provider and include Western Power as an additional insured with respect to liability incurred as a result of the acts or omissions of the Service Provider or the Service Provider's Personnel.

Insurance of Employees	
Scope of cover	<p>Insurance against any Claim in respect of any personal injury to or death of any person employed or engaged by the Service Provider which arises out of, or is caused or contributed to by, the performance or non-performance of the Services by the Service Provider or any Contractor and/or Subcontractor or agent or employee of the Service Provider or Contractor and/or Subcontractor:</p> <p>(a) at common law and for breach of any statutory duty or Legislative Requirements; and</p> <p>(b) for any compulsory statutory workers' compensation benefits or other liability under the <u>Workers' Compensation and Injury Management Act 2023 (WA)</u> or other applicable legislation.</p>
Sum insured	Provide cover to such amount as prescribed from time to time by the <u>Workers' Compensation and Injury Management Act 2023 (WA)</u> or any other applicable legislation.
Insured	The insurance must be in the name of the Service Provider and, to the extent permitted by law, extended to indemnify Western Power as principal or owner or occupier against any liability which it may incur to such employees or persons engaged in the performance of the Services both statutory and at common law.

Motor Vehicles and Equipment	
Scope of cover	<p>Insurance against all loss and/or damage to all items of the Service Provider's plant and equipment (whether owned, hired or leased) used in the performance of the Services.</p> <p>The Service Provider must insure all vehicles or items which are licensed as motor vehicles or are required to be so licensed (whether owned, hired or leased) used in the performance of the Services under:</p> <p>(a) compulsory motor vehicle third party insurance; and</p> <p>(b) a comprehensive motor vehicle and third party liability policy.</p>
Sum insured	The limit of liability must be no less than \$20 million for any one occurrence and unlimited as to the number of occurrences.
Insured	Other than for compulsory third party motor vehicle insurance, the insurance must be in the name of the Service Provider and, to the extent permitted by law, be extended to indemnify Western Power as principal for Claims from Third Parties.

Schedule 7– Electronic Notices Protocol

In this Schedule, unless the context otherwise requires, the defined terms in column 1 below have the respective meanings in column 2:

Column 1

Addressee

Column 2

means the person to whose Email Address an email is sent.

Automated Message Response

means an email (“Reply Email”) sent automatically upon receipt of an email (“Original Email”), where the Reply Email is sent from an Addressee’s Information System to the Originator of the Original Email, acknowledging that the Original Email has been received by the Addressee’s Information System and containing:

- (i) the name of the Originator of the Original Email;
- (ii) at least the time, date and subject title of the Original Email;
- (iii) the name of the Addressee of the Original Email; and
- (iv) the date and time the Original Email was received by the Addressee’s Information System (which in the absence of evidence to the contrary is taken to be the creation date of the Reply Email).

Data

includes the whole or part of a computer program within the meaning of the *Copyright Act 1968* (Cth).

Email

means a communication of Information by means of guided or unguided electromagnetic energy, or both, by way of packet transfer between and within computer networks using the TCP/IP protocol.

Email Address

means the address nominated in Schedule 2, being an address which is a combination of a personal identifier and a machine/network identifier, which are together capable of being resolved by computer networks transmitting email using the TCP/IP protocol, so that email is transmitted to the person providing that email address.

Information

means information in the form of Data, text, images or sound.

Information System

means a system for generating, sending, receiving, storing or otherwise processing emails.

Originator

means the person who sends an email to an Addressee.

Place of Business

means a place of business nominated under Schedule 2 and in relation to a government, a government authority or a non-profit body, includes a place where any operations or activities are carried out by that government, authority or body.

Purported Originator

means the person on the face of the email who appears to be, or purports to be the Originator, including by purported compliance with clause 3 of this Schedule.

1 Parties to establish email Addresses

- (a) The Parties must each:
- (i) from time to time, nominate a Place of Business and establish an Email Address to be used for Notices under this Contract;
 - (ii) use reasonable endeavours to ensure that the Information System, on which Emails addressed to the Email Address are received, is operational:
 - (A) 24 hours-a-day; and
 - (B) 7 days-a-week,to receive emails and send Automated Response Messages as required by this Contract;
 - (iii) as soon as practicable notify the other Party of its Place of Business and Email Address and of any change in each of them; and
 - (iv) establish a mechanism to generate an Automated Response Message for each email (other than an Automated Response Message) received at the Email Address.

2 Requirement for Automated Response Message

- (a) An Email is neither given nor received under this Contract until the Originator receives the Addressee's Automated Response Message for the Email.
- (b) It is the Originator's responsibility for each attempted Email to verify that it receives an Automated Response Message, and if it does not receive an Automated Response Message arrange either for:
- (i) retransmission of the Email; or
 - (ii) communication of the Information by an alternative medium (but this clause 2(b) does not limit the Addressee's responsibilities under clause 3 of this Schedule).
- (c) If the Originator receives an Automated Response Message for an Email, then (unless the Addressee proves otherwise) for the purposes of this Contract the:
- (i) Originator has sent; and
 - (ii) Addressee has received,
- the Email at the date and time shown in the Automated Response Message.
- (d) It is the Addressee's responsibility for each Email for which the Addressee's Information System generates an Automated Response Message to:

- (i) read the Email and the Information it contains, and if applicable communicate it to the appropriate person within the Addressee's organisation;
- (ii) if necessary, notify the Originator of any difficulty in opening, reading, decompressing or otherwise accessing (in a form reasonably readable) any Information contained in the Email; and
- (iii) if it appears to the Addressee that the Addressee was not the intended or correct recipient of the Information in the Email, communicate this fact to the Originator.

3 Location

Unless otherwise agreed between the Originator and the Addressee of an Email, the Email and the Information it contains is deemed to have been sent from the Originator's Place of Business and received at the Addressee's Place of Business.

4 Attribution of Emails and reliance

Except to the extent that:

- (a) the Purported Originator of an Email and the Addressee of the Email agree otherwise; or
- (b) the Purported Originator of an Email proves otherwise,

the Addressee of an Email in respect of which an Automated Response Message has been given may assume for all purposes under this Contract that the:

- (c) Purported Originator of the Email is the Originator of the Email; and
- (d) Email was sent by, or with the knowledge and express authority of, the Purported Originator.

5 Signatures

For the purposes of this Contract, an Email must identify the Originator.

6 Information format

An Originator must use reasonable endeavours, in selecting the data format for Information contained in an Email, to adopt a consistent format over time to facilitate any automated processing of the Information by the Addressee.

Schedule 8– Key Performance Indicators

KPI	Service Availability
Description	Measure of Service availability over 12 months period.
Unit of Measure	Percentage
Indicator	Measurable
Measurement	Total number of MWhr available / total number of MWhr capacity over 12 months period. The measurement doesn't roll over to the next 12 months period. It is reset at the start of a new 12 months period.
Minimum Performance Level:	Required Availability Level
Scope	Focus on improved Service Availability.
Tolerance	Where performance is below the Minimum Performance Level, an Annual Reconciliation Amount will be applied to Service Provider in accordance with this Contract.

KPI	Generator synchronising performance
Description	Service must be capable of synchronising and achieving its ramp rate of Injection or Withdrawal within 15 minutes of receiving a Dispatch Instruction from AEMO.
Unit of Measure	Count
Indicator	Measurable
Measurement	The number of times that Service fails to meet the requirement.
Minimum Performance Level:	0
Scope	Compliance to generator synchronising performance requirements.
Tolerance	If the minimum performance level is not met, then the Service Provider is to submit an investigation report and improvement plan.

KPI	System restart service performance
Description	Allowing remote start functionality for all System Restart Services, such that they can be connected to a dead bus at full speed with no load within 15 minutes of AEMO issuing a System Restart Service start-up command.
Unit of Measure	Count
Indicator	Measurable
Measurement	The number of times that Service fails to meet the requirement
Minimum Performance Level:	0
Scope	Compliance to system restart service performance requirements
Tolerance	If the Minimum Performance Level is not met, then the Service Provider is to submit an investigation report and improvement plan.

KPI	Maintenance performance
Description	Where the Service has just been found to be Unavailable when called upon, The technician/expert is to be on site at the Equipment location within 12 hours of a call-out.
Unit of Measure	Count
Indicator	Measurable
Measurement	The number of times that Service fails to meet the requirement

Minimum Performance Level:	0
Scope	Compliance to maintenance performance requirements
Tolerance	If the minimum performance level is not met, then the Service Provider is to submit an investigation report and improvement plan.

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Schedule 9 – Form of Security

By: [Name of Financial Institution]

To: Electricity Networks Corporation,
GPO Box L921,
Perth WA 6842

Service Provider: [Name]

Contract: Non-Co-optimised Essential System Services Contract – North
Country Region Contract Number [TBC] dated [Date]

Amount: \$[insert] (the “Sum”)

At the request of the Service Provider and in consideration of the Electricity Networks Corporation (ABN 18 540 492 861) (**Western Power**) accepting this undertaking as the security required by the Contract for the provision of Non-Co-optimised Essential System Services, [name of Financial Institution] (the “**Financial Institution**”) unconditionally undertakes to pay on written demand any sum or sums which may from time to time be demanded by Western Power to a maximum of the Sum.

This undertaking must continue until:

- (a) Western Power sends the Financial Institution a written notification that the security is no longer required by Western Power;
- (b) this undertaking is returned to the Financial Institution; or
- (c) payment to Western Power by the Financial Institution of the whole of the Sum.

Should the Financial Institution be notified in writing, purporting to be signed by Western Power, that Western Power desires payment to be made of the whole or any part or parts of the Sum, it is unconditionally agreed that the payment or payments will be made to Western Power immediately without further reference to the Service Provider and notwithstanding any notice given by the Service Provider or any other person to the Financial Institution not to pay Western Power.

The Financial Institution may at any time, without being required to do so, pay to Western Power the Sum, less any amount or amounts it may previously have paid under this undertaking.

This undertaking is personal to the Western Power. Western Power cannot assign, transfer, charge or otherwise deal with its rights under this undertaking without the prior written consent of the Financial Institution. The Financial Institution’s consent will not be unreasonably withheld.

This undertaking is governed by the laws of Western Australia.

Dated this day of 20..

Signed, Sealed and Delivered
for and on behalf of the Financial Institution

Schedule 10– Participation Plan

[Insert]

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